

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DIONNE MARSHALL and LUCIA GOMEZ,
on behalf of themselves and all others similarly
situated

Plaintiffs,

v.

DEUTSCHE POST DHL and DHL EXPRESS
(USA) INC.,

Defendants.

Case No.: 13-CV-01471 (RJD)(JO)

**DECLARATION OF
CHRISTINA J. FLETCHER, ESQ.
SUPPORTING DHL EXPRESS (USA)
INC.'S OPPOSITION TO
PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION**

I, CHRISTINA J. FLETCHER, declare as follows:

1. I am an attorney with the law firm of Duane Morris LLP which represents DHL Express (USA), Inc. ("DHL") in the above-captioned matter. I am admitted to practice in this Court and the State of New York. I have personal knowledge of the matters set forth herein, and if called to do so, I could and would testify competently under oath.

2. Plaintiffs filed their a purported collective action Complaint on March 20, 2013 alleging that DHL violated the Fair Labor Standards Act ("FLSA") and served DHL only on March 25, 2013. On February 14, 2014, Plaintiffs filed a First Amended collective action Complaint. Defendant Deutsche Post DHL has not been served with either the original or First Amended Complaint.

3. Extensive discovery has occurred in this litigation. Plaintiffs and DHL have exchanged documents (including ESI) and interrogatories. In November and December 2013, DHL deposed Plaintiffs Marshall and Gomez respectively. DHL will re-depose Plaintiffs Gomez and Marshall on the new claim in their First Amended Complaint on May 19, 2014 and May 20, 2014, respectively. DHL will depose the sole opt-in to this litigation on May 19, 2014. To date, Plaintiffs have deposed six DHL employees, including a 30(b)(6) representative.

4. Attached as **Exhibit 1** are true and correct copies of excerpts from the Deposition of Plaintiff Dionne Marshall.

5. Attached as **Exhibit 2** are true and correct copies of excerpts from the Deposition of Plaintiff Lucia Gomez.

6. Attached as **Exhibit 3** are true and correct copies of excerpts and exhibits from the deposition transcript of John Nuttall, Acting Director of Labor Relations for DHL Express (USA), Inc. (formerly Labor Relations Manager covering New York, including JFK).

7. Attached as **Exhibit 4** are true and correct copies of excerpts and exhibits from the deposition transcript of Albert Camera, Clearance Manager for MIA.

8. Attached as **Exhibit 5** are true and correct copies of excerpts from the deposition transcript of Henry Bennett, Senior Director Human Resources for DHL Express (USA), Inc.

9. Attached as **Exhibit 6** are true and correct copies of excerpts from the deposition transcript of Vincent Martinez, former Clearance Manager for LAX (now Broker Review Manager at LAX).

I declare under penalty of perjury in accordance with the laws of the United States that the foregoing is true and correct.

Executed this 13th day of May, 2014 at Lancaster, Pennsylvania.



Christina J. Fletcher

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DIONNE MARSHALL and LUCIA GOMEZ,)
on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

vs.)

) 1:13-cv-01471

) (RJD) (JO)

DEUTSCHE POST DHL and DHL)
EXPRESS (USA) INC.,)

Defendants.)
-----)

DEPOSITION OF DIONNE MARSHALL
New York, New York
Thursday, November 14, 2013

Reported by:
Philip Rizzuti
JOB NO. 67746

1 Marshall

2 has in the U.S.?

3 A. No.

4 Q. Do you know any states other than
5 New York where DHL has a gateway facility?

6 A. Yes.

7 Q. In what states do you believe that
8 DHL has a gateway facility?

9 A. Cincinnati.

10 Q. Anywhere else?

11 A. LAX.

12 Q. Anywhere else?

13 A. Not that I can recall.

14 Q. Do you know if Cincinnati is union
15 or non-union?

16 A. I don't know.

17 Q. Do you know if LAX is union or
18 non-union?

19 A. I don't know.

20 Q. I will ask you a broad question
21 because it is probably an easier one to give
22 an answer to. Do you know anyone at the
23 Cincinnati facility?

24 A. I worked with a few people, yes.

25 Q. With whom have you worked from

1 Marshall

2 that facility?

3 A. Rusty, I don't know his last name.

4 Q. Anyone else?

5 A. Debra.

6 Q. Anyone else?

7 A. Not that I can recall.

8 Q. Do you know what position Rusty
9 holds at the Cincinnati facility?

10 A. No.

11 Q. Do you know what position Debra
12 holds at the Cincinnati facility?

13 A. No.

14 Q. Did you ever ask Rusty about
15 rounding?

16 A. No.

17 Q. Did you ever ask Rusty about meal
18 periods?

19 A. No.

20 Q. Did you ever ask Debra about
21 rounding?

22 A. No.

23 Q. Did you ever ask Debra about lunch
24 periods?

25 A. No.

1 Marshall

2 end time is 2 p.m. and you leave at 2:05,
3 2:04, it is automatically rounded back up to
4 2.

5 Q. Anything else?

6 A. No.

7 Q. Do you know whether JFK utilizes a
8 five minute grace period after the start of a
9 shift?

10 A. Yes.

11 Q. What is a five minute grace
12 period?

13 A. If you start at 2 and you come in
14 at 2:04 or 2:05 you don't get -- you are not
15 marked as late, but you are still losing that
16 four minutes or that five minutes that you
17 clock in.

18 Q. What does that mean?

19 A. It means they don't pay you for
20 the five minutes that you clock in, but they
21 don't penalize you for it.

22 Q. So it is your understanding, again
23 I am not saying this is happening, so it is
24 your understanding that if you clock in at
25 2:05 during the five minute grace, it is your

1 Marshall

2 A. No.

3 Q. Do you know why a supervisor would
4 have to look at a seniority list before
5 calling somebody to come in early?

6 A. Yes.

7 Q. Why is that?

8 A. So they don't get grieved.

9 Q. How would a supervisor get
10 grieved?

11 MR. GALLAWAY: Objection.

12 Q. You can answer?

13 A. If they call an employee in that
14 wasn't seniority, they call them below, and
15 the one below came in, the one above could
16 grieve.

17 Q. Or the shop steward could grieve?

18 A. Yes.

19 Q. Or the union could grieve?

20 A. Yes.

21 Q. Have you ever filed a grievance
22 with respect to rounding?

23 A. Not that I can recall.

24 Q. Have you ever filed a grievance
25 with respect to meal periods?

1 Marshall

2 A. No.

3 Q. Have you ever heard of anybody at
4 JFK, let's go from the time 851 got there,
5 have you ever heard anyone at JFK file a
6 grievance for rounding?

7 A. No, not that I can recall.

8 Q. Have you ever heard anyone file a
9 grievance since 851 got there for meal
10 periods?

11 A. No.

12 MR. RAO: Quick break.

13 MR. GALLAWAY: Yes. Off the
14 record.

15 (Recess taken.)

16 Q. During the time you were at JFK
17 have you ever seen a written policy regarding
18 the ten minute early rounding?

19 A. No, I can't recall that.

20 Q. During the time that you were at
21 JFK have you ever seen a written policy
22 regarding auto meal deductions of 30 minutes?

23 A. No.

24 Q. Have you ever seen a written
25 policy at JFK regarding a five minute round on

1 Marshall

2 work?

3 A. No.

4 Q. Did Germaine Stanley ever require
5 you to clock in ten minutes early and work?

6 A. No.

7 Q. Did Chris Cortes ever ask you to
8 clock in ten minutes early and work?

9 A. No.

10 Q. Did Bruce Kholer ever require you
11 to clock in ten minutes early and work?

12 A. No.

13 Q. Did Angelo Gomez ever require you
14 to clock in ten minutes early and work?

15 A. No.

16 Q. Any manager at all at DHL while
17 you were there at the JFK facility ever
18 require you to clock in ten minutes early and
19 work?

20 A. No. They just watched us do it
21 and didn't pay us for it.

22 Q. Who is they?

23 A. Supervisors. Jonathan would watch
24 us swipe in early and we would sit down and
25 work and we didn't get paid for it.

1 Marshall

2 shift?

3 A. Flight, not the freight.

4 Q. Right?

5 A. Yes.

6 Q. Do you know if Cincinnati has a
7 ten minute rounding on the front end of a
8 clock in?

9 MR. GALLAWAY: Objection.

10 A. No, I don't know.

11 Q. Do you know whether LAX has a ten
12 minute round on the front end of a clock in?

13 A. I don't know.

14 Q. Do you know if Cincinnati a 30
15 minute auto deduction for meals?

16 A. I don't know.

17 Q. Do you know if LAX has a 30 minute
18 auto deduction for meals?

19 A. I don't know.

20 Q. So after all the flight data was
21 entered, that is generally when you would take
22 your lunch break?

23 A. Yes.

24 Q. Walk me through what happens after
25 the flight data is entered and you take a

1 Marshall

2 A. Yes.

3 Q. Anything in between 11 and 2 that
4 you can recall?

5 A. Not that I recall.

6 Q. A 3 a.m. start time?

7 A. Yes.

8 Q. A 4:30 a.m. start time?

9 A. Yes.

10 Q. Any other start times between 4:30
11 a.m. and 2 p.m. as you can recall as you sit
12 here today?

13 A. Yes.

14 Q. What are they?

15 A. 8 a.m., 9 a.m., and that is all I
16 can recall.

17 Q. Starting from the 2 a.m. shift,
18 okay?

19 A. Yes.

20 Q. Do you know who the supervisor was
21 for the 2 a.m. shift in 2012?

22 A. Yes.

23 Q. Who was it?

24 A. Jonathan.

25 Q. Jonathan Cane?

1 Marshall

2 A. Yes.

3 Q. Do you know who the supervisor was
4 on the 4:30 a.m. shift?

5 A. No, I can't recall. Probably
6 Jonathan.

7 Q. Are you guessing?

8 A. Yes, I can't recall.

9 Q. Do you know who the supervisor was
10 on the 3 a.m. shift in 2012?

11 A. I can't recall that.

12 Q. Do you know who the supervisor was
13 on the 8 a.m. shift?

14 A. Cathy.

15 Q. Last name unknown?

16 A. Yes.

17 Q. Do you know who the supervisor was
18 on the 9 a.m. shift?

19 A. Cathy.

20 Q. Do you know on the 2 p.m. shift
21 that was Jonathan?

22 A. And Cathy.

23 Q. And Germaine?

24 A. Yes, and Germaine.

25 Q. Do you know who the supervisor was

1 Marshall

2 for the 3 p.m. shift?

3 A. Germaine.

4 Q. Do you know who the supervisor was
5 for the 4 p.m. shift?

6 A. I can't recall.

7 Q. Do you know who the supervisor was
8 for the 5 p.m. shift?

9 A. I can't recall.

10 Q. Do you know who the supervisor was
11 for the 9 p.m. shift?

12 A. Can't recall.

13 Q. Do you know who the supervisor was
14 for the 10 p.m. shift?

15 A. Jonathan.

16 Q. Do you know who the supervisor was
17 for the 11 p.m. shift?

18 A. Jonathan.

19 Q. Do you know how many clearance
20 agents worked the 3 p.m. shift?

21 A. No.

22 Q. Do you know how many clearance
23 agents worked the 4 p.m. shift?

24 A. No.

25 Q. Do you know how many clearance

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

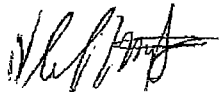
COUNTY OF NEW YORK)

I, Philip Rizzuti, a Notary
Public within and for the State of New
York, do hereby certify:

That DIONNE MARSHALL, the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 26th day of
November, 2013.



PHILIP RIZZUTI

EXHIBIT 2

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 DIONNE MARSHALL and LUCIA)
5 GOMEZ, on behalf of)
themselves and all others)
6 similarly situated,)

7 Plaintiffs,) No: 1:13-cv-01471
) (RJD) (JO)

8 vs.)
)

9 DEUTSCHE POST DHL and DHL)
EXPRESS (USA), INC.,)

10)
Defendants.)

11 -----)

12
13
14
15 DEPOSITION OF LUCIA GOMEZ
16 New York, New York
17 Thursday, December 12, 2013
18
19
20
21

22 Reported by: ELIZABETH F. TOBIN, RPR
23 JOB NO. 68250
24
25

1 Gomez

2 Q. How long did you have the 4:30 p.m.
3 shift?

4 A. I don't remember those. It was many
5 years.

6 Q. You had the 4:30 p.m. shift when you
7 started in 1999?

8 A. Most of the time. Most of the time.

9 Q. On the 4:30 p.m. to 1:00 a.m. shift,
10 do you recall who your supervisor was?

11 A. 4:30, it was Nora, Nora Sherry.

12 Q. How do you spell her last name, do
13 you know?

14 A. S-h-e-r-r-y.

15 Q. Nora Sherry. Do you recall who your
16 supervisor was on the midnight to 8:00 a.m.
17 shift?

18 A. Jonathan.

19 Q. Do you know what his last name was?

20 A. Kane.

21 Q. C-a-i-n, correct?

22 A. I think K-a-n-e.

23 Q. Do you recall who your supervisor
24 was on the 1:30 to 11:00 a.m. shift?

25 A. It's Jonathan.

1 Gomez

2 Q. Same guy?

3 A. Yes.

4 Q. Do you recall who your supervisor
5 was on the 3:30 a.m. to 12:00 p.m. shift?

6 A. It's Jonathan up to 7 o'clock in the
7 morning and after 7:00, Cathy Cinque,
8 C-i-n-q-u-e Cinque.

9 Q. That was after 7:00 a.m.?

10 A. Yes.

11 Q. Who was your supervisor on the 4:30
12 to 1:00 p.m. --

13 A. Same.

14 Q. Am I correct in assuming that
15 Jonathan was your supervisor up until
16 7:00 a.m.?

17 A. Yes, he leaves 7:00 a.m.

18 Q. Do you know who Jonathan reported
19 to, who was Jonathan's boss?

20 A. No, I don't know.

21 Q. Do you know who Angelo Gomez is?

22 A. Angelo Gomez is the manager.

23 Q. Do you know who Cathy reported to?

24 A. No.

25 Q. Have you ever worked in any other

1 Gomez

2 facility other than JFK?

3 A. Before?

4 Q. While at DHL?

5 A. While at DHL? I have a part-time
6 job.

7 Q. You had a part-time job with DHL
8 while you worked for DHL?

9 A. No, while I worked for DHL, I had a
10 part-time job.

11 Q. I don't want to hear about that.

12 A. I thought you say while working for
13 DHL I had another job.

14 Q. But while you were working for DHL
15 at JFK, you never worked at another facility,
16 like LaGuardia?

17 A. Oh, DHL? No.

18 Q. Do you know what a gateway is?

19 A. Gateway? No.

20 Q. Do you know how many gateways DHL
21 has in the U.S.?

22 A. Gateway, where the plane is?

23 Q. If that's your definition.

24 A. JFK, Miami, LAX, SFO. That's it.

25 Q. Have you ever spoken to anybody, any

1 Gomez

2 service agent or clearance agent who works at
3 Miami?

4 A. No.

5 Q. Have you ever spoken to any service
6 agent or clearance agent who works at LAX?

7 A. No.

8 Q. Have you ever spoken to any service
9 agent or clearance agent who works at SFO?

10 A. No.

11 Q. I know you've been gone a little
12 while. Just focus on 2012.

13 Do you know who the director of the
14 Miami facility was in 2012?

15 A. No.

16 Q. Do you know who the director of the
17 LAX facility was in 2012?

18 A. No.

19 Q. Do you know who the director of the
20 SFO facility was in 2012?

21 A. No.

22 Q. Do you know the names of any
23 supervisors at the Miami gateway in 2012?

24 A. No.

25 Q. Do you know the names of any of the

1 Gomez

2 LAX supervisors in 2012?

3 A. No.

4 Q. Do you know the names of any SFO
5 supervisors in 2012?

6 A. No.

7 Q. Did you ever speak to anybody at
8 Miami gateway regarding meal periods?

9 A. No.

10 Q. Did you ever speak to anybody at
11 Miami regarding rounding of time?

12 A. No.

13 Q. Did you ever speak to anybody at
14 Miami regarding off the clock work?

15 A. No.

16 Q. Did you ever speak to LAX regarding
17 meal periods?

18 A. No.

19 Q. Did you ever speak to anybody at LAX
20 regarding rounding of time?

21 A. No.

22 Q. Did you ever speak to anybody at LAX
23 regarding off the clock work?

24 A. No.

25 Q. Did you ever speak to anybody at SFO

1 Gomez

2 regarding meal periods?

3 A. No.

4 Q. Did you ever speak to anybody at SFO
5 regarding rounding of time?

6 A. No.

7 Q. Did you ever speak to anybody at SFO
8 regarding off the clock work?

9 A. No.

10 Q. Do you know if the service agents
11 and senior service agents or clearance agents
12 or senior clearance agents at Miami are union?

13 A. I don't know.

14 Q. Do you know if the clearance agents
15 and senior clearance agents at LAX are union?

16 A. I don't know.

17 Q. Do you know whether the clearance
18 agents or senior clearance agents at SFO are
19 union?

20 A. I don't know.

21 Q. Do you know if Miami calls their
22 employees who clear freight clearance agents?

23 A. No.

24 Q. Do you know if LAX calls their
25 employees who clear freight clearance agents?

1 Gomez

2 A. No.

3 Q. Do you know if SFO calls their
4 employees who clear freight clearance agents?

5 A. No.

6 Q. Do you know that SFO shut down in
7 2013?

8 A. No.

9 Q. I'll ask a more general question.
10 Do you know that SFO shut down completely?

11 A. No.

12 Q. Do you recall when you were at JFK
13 there was a union provision in the collective
14 bargaining agreement regarding tardiness where
15 if an employee clocked in more than five
16 minutes past their start time they would
17 receive an instance of tardiness? Are you
18 familiar with that?

19 A. Yes.

20 Q. Did you ever receive any corrective
21 actions for having more than three tardies in
22 one month?

23 A. No.

24 Q. Did anyone from the union -- and I
25 mean anybody -- I want to be as broad as

1 Gomez

2 A. No.

3 Q. Were you ever in any meeting at all
4 where anybody discussed that Kronos would be a
5 new time keeping system going forward?

6 A. No, because I never was in a
7 meeting.

8 Q. You don't remember that?

9 A. No.

10 Q. Did you ever take any online,
11 through a computer, training of the Kronos time
12 keeping system?

13 A. No.

14 Q. Did anybody ever train you on how to
15 use the new time clocks or Kronos system?

16 A. No.

17 Q. How did you come to know how to use
18 the new time clocks?

19 A. I just have to swipe the card.

20 Q. How many ways were there to clock in
21 at the JFK facility? It's a bad question.
22 Even I don't understand what I'm asking.

23 A. I don't understand.

24 Q. Let me ask it again.

25 Were there time clocks in the JFK

1 Gomez

2 else's clock-ins other than your own?

3 A. No.

4 Q. Did you ever keep track of when any
5 other clearance agent took a lunch?

6 A. No.

7 Q. Do you know if the Miami gateway
8 utilizes a ten minute rounding period before
9 the start of a scheduled shift?

10 A. I don't know.

11 Q. Do you know if LAX uses a ten minute
12 rounding period for before the start of a
13 scheduled shift?

14 A. I don't know.

15 Q. Do you know if SFO uses a ten minute
16 rounding period before the start of a scheduled
17 shift?

18 A. I don't know.

19 Q. When you were on your 4:30 to
20 1:00 p.m. shift, when was your meal period?

21 A. We don't have a time.

22 Q. When did you normally take your meal
23 period during the 4:30 a.m. to 1:00 p.m. shift?

24 A. Whenever I have a chance.

25 Q. When would that typically be?

1 Gomez

2 minutes before a scheduled shift. I understand
3 that. The question was more specific.

4 That is, at any time did any
5 supervisor ever require you to clock in nine
6 minutes before the start of your scheduled
7 shift and work without pay?

8 A. No.

9 Q. Do you know if Miami has a 30 minute
10 meal deduction?

11 A. I don't know.

12 Q. Do you know if LAX has a 30 minute
13 auto meal deduction?

14 A. I don't know.

15 Q. Do you know if SFO has a 30 minute
16 auto meal deduction?

17 A. I don't know.

18 Q. During the entire time you were at
19 DHL did you ever ask a supervisor to change
20 your time punches?

21 A. No.

22 Q. During the entire time you were at
23 DHL did you ever ask a supervisor to reverse an
24 automatic meal deduction?

25 A. No.

C E R T I F I C A T E

[illegible]

I, ELIZABETH F. TOBIN , a Notary
Public within and for the State of New
York, do hereby certify:

That LUCIA GOMEZ, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 24th day of December,
2013.

ELIZABETH F. TOBIN

EXHIBIT 3

[Page 1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

DIONNE MARSHALL and LUCIA GOMEZ,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

v. Index No: 13-cv-0147 (RJD) (JO)

DEUTSCHE POST DHL, and DHL EXPRESS
(USA), INC.,

Defendants.

-----x

January 30, 2014

10:20 a.m.

Deposition of JOHN NUTTALL, taken by
Plaintiffs, pursuant to notice, at the offices of
McLaughlin & Stern, LLC, 260 Madison Avenue, New
York, NY 10016, before Allison Fowler, a
Shorthand Reporter and Notary Public of the State
of New York.

1 J. NUTTALL

2 Q. But of the four, LAX, CVG, Miami and
3 JFK, only JFK and Miami have unionized clearance
4 agents, is that accurate?

5 A. That's correct.

6 Q. And therefore, CVG and LAX employ
7 nonunionized clearance agents?

8 A. Correct.

9 Q. Does JFK and Miami employee unionized
10 and nonunionized clearance agents or solely
11 unionized clearance?

12 A. JFK employs only union clearance
13 agents. I can't speak to Miami because I have
14 not dealt with Miami, and I would like to
15 clarify. I told you I'm the acting director
16 responsible for labor relations throughout the
17 country, I've been in that role for less than a
18 week, so I'm not up to speed on Miami. I can't
19 really answer any questions as to what Miami does
20 specifically.

21 Q. Congratulations on the new job.

22 A. Remember it is acting. A couple months
23 from now, if I still have it, you can
24 congratulate me.

25 Q. What were you before this?

1 J. NUTTALL

2 occasions, they'll have knowledge as to whether
3 or not they can accept or deny it, right?

4 A. Yes.

5 Q. Are issues of overtime subjects in
6 which you would say that have been dealt with
7 previously?

8 A. Yes, violations of seniority, somebody
9 got called in when a senior person should have
10 been called in, that -- fortunately, it doesn't
11 happen a lot, but that is something that, if
12 that's happened and they know she should have
13 called a different employee, they'll -- they'll
14 pay the employee that should have been called.

15 Q. Besides seniority and underlings being
16 called in to work overtime before superiors would
17 be called in for overtime -- I'm assuming that's
18 what you're getting at, right?

19 A. Yes.

20 Q. And that has to deal with, in the
21 collective bargaining agreement, seniority in the
22 bidding process, is that correct?

23 A. Yes.

24 Q. Besides the seniority issue, have
25 employees ever grieved about clocking in early

1 J. NUTTALL

2 and not being compensated for their time?

3 A. No.

4 Q. Have employees ever grieved about
5 coming back from lunch early and having a full
6 30-minute or one-hour lunch, whatever the lunch
7 is, deducted from their paycheck?

8 A. No.

9 Q. And that's just from your knowledge at
10 the JFK facility?

11 A. I'm only speaking to JFK, correct.

12 Q. Okay. Besides seniority overtime
13 issues, have there been any other grievances
14 related to the overtime that have been presented
15 to you?

16 A. No. All grievances regarding overtime
17 are related to seniority. Somebody feels as
18 though there was time that they didn't get
19 because they were senior to the person that got
20 it. There's no requirement for us to offer
21 seniority. So if somebody is filing a grievance
22 over seniority, it's because someone else got it
23 and they feel they should have.

24 Q. If an employee were to complain about
25 clocking in early and not being compensated for

1 J. NUTTALL

2 MR. GALLAWAY: Let's mark these.

3 (Collective Bargaining Agreement was
4 marked as Nuttall Exhibit 1, for
5 identification, as of this date.)

6 (Successor Agreement to Collective
7 Bargaining Agreement was marked as Nuttall
8 Exhibit 2, for identification, as of this
9 date.)

10 Q. Mr. Nuttall, you've been handed what's
11 been marked as Nuttall Exhibit 1 and Nuttall
12 Exhibit 2. Do you recognize one or both of these
13 documents?

14 A. I do.

15 Q. And can you tell me what Nuttall
16 Exhibit 1 is?

17 A. Nuttall Exhibit 1 is the collective
18 bargaining agreement between the JFK clerical and
19 the company, and it is -- I believe it expired in
20 2009, I want to say. It probably says it in it,
21 but I believe it would have expired on March 1,
22 2009.

23 Q. And are clearance agents and senior
24 clearance agents at JFK subject, or when Nuttall
25 Exhibit 1 was in effect from 2005 to 2009, were

1 J. NUTTALL

2 the clearance agents and senior clearance agents
3 subject to the policies and procedures in the
4 CBA?

5 A. Yes.

6 Q. And can we look at Nuttall Exhibit 2.
7 Do you recognize this document?

8 A. I'm assuming what it is, and I
9 shouldn't do that.

10 Q. Just take your time and flip through
11 it.

12 A. Yes, this is the successor agreement to
13 Nuttall Exhibit 1 and with an effective date of
14 December 15, 2009, through February 28, 2014.

15 Q. So Nuttall Exhibit 2 is the current CBA
16 in place for clearance agents and senior
17 clearance agents, is that correct?

18 A. Yes.

19 Q. At the JFK facility?

20 A. At the JFK facility, yes.

21 Q. And you said these CBAs are negotiated?

22 A. That's correct.

23 Q. Can you explain the negotiations
24 process to me?

25 A. Sure. Prior to the expiration, the

1 J. NUTTALL

2 union contacts the company, indicating that they
3 are interested in discussing engaging in a
4 successor agreement and they would like to set
5 meetings to negotiate the terms and conditions of
6 their members' employment. We schedule -- we
7 schedule the meetings and we present proposals on
8 things we want to change, they present proposals
9 on things that they would like to change in the
10 contract, and we engage in back and forth, and
11 what results from it, Nuttall Exhibit 2, is --
12 are the things that we've agreed upon to change
13 in the CBA, and it includes the economics,
14 obviously they're looking to negotiate increases
15 in their wages and health benefits, and it's all
16 reflected in Nuttall Exhibit 2.

17 Q. Are you the representative from DHL
18 that negotiates with the union representative on
19 behalf of DHL?

20 A. I am the lead company employee. We
21 have an outside counsel who is what we call first
22 chair, who does -- who takes leadership of the
23 negotiation itself.

24 Q. On behalf of DHL?

25 A. On behalf of DHL, yes.

1 J. NUTTALL

2 it equals ten hours and 44 minutes, the time that
3 she was clocked in, and that's 10.73 hours, and
4 if you look at the cumulative total amount on the
5 farthest right-hand column for February 21st, it
6 says 10.52, does it not?

7 A. It does.

8 Q. The difference is 5.21, which equates
9 to 12.6 minutes, five minutes that she had
10 clocked back in early for lunch and eight minutes
11 that she had clocked in early prior to her shift.
12 Do you now stand by your testimony earlier that
13 employees should be paid for all the time that
14 they're clocked in?

15 A. Well, first we were talking only about
16 lunch, prior to.

17 Q. Sure.

18 A. So I do have a different position
19 regarding the pre-shift, but the five minutes on
20 this particular day, I don't know what the
21 circumstances were, I don't know if she punched
22 back in and then decided she had to go out to her
23 car. I don't know what the circumstances are.

24 Q. Let's take the following day.

25 MR. RAO: I don't know if you have to

1 J. NUTTALL

2 starting her shift, she was actually clocked in
3 for 8.38 hours that day. The difference of 0.36
4 or 0.37, how you look at it, is 22 minutes, which
5 is eight minutes for the beginning of her shift
6 and 14 minutes that she clocked in early.

7 A. Okay.

8 Q. Okay. So this the second instance. Do
9 you have any explanation why Ms. Gomez wasn't
10 compensated for the 14 minutes that she clocked
11 back in early for lunch?

12 MR. RAO: Object as to form.

13 A. I don't know Ms. Gomez. I don't know
14 the circumstances. It could very well be that
15 she asked her supervisor to allow her to work
16 overtime and he said no and she already clocked
17 out and back in. I don't know. We could go
18 through every day, and I don't know what the
19 circumstances were.

20 Q. I'll represent to you that every day
21 Ms. Gomez was not properly compensated because
22 she had signed back in early from lunch and/or
23 because she had clocked in early.

24 MR. RAO: Object as to form.

25 There's no question pending.

1 J. NUTTALL

2 Q. Is it still your testimony that
3 employees are compensated accurately for the time
4 by which they've clocked in until which they've
5 clocked out?

6 A. Your questions that I answered were to
7 -- at least as I took them, were how things are
8 done currently, and they are, it is my
9 understanding, on a swipe in/swipe out and paid
10 minute to minute, and that is the current. The
11 -- this circumstance, like I said, there are
12 circumstances where there are manual changes
13 done. If somebody worked there for a period of
14 time that wasn't clocked in and clocked out, or
15 if they didn't work at a time where they were
16 clocked in and there could be changes to it. I
17 don't know the circumstances of Ms. Gomez on
18 these days or any other days. The pre-shift is a
19 completely different issue, but with the lunch,
20 my direction and training has been to everybody
21 at JFK, as well as anybody else that I have to
22 deal with, is that employees are to be paid for
23 all hours that they work, whether or not they
24 were authorized or not. Contract requires them
25 to seek authorization. If they don't seek

1 J. NUTTALL

2 authorization and work, they still need to be
3 paid, however, and then that's another issue they
4 might have to address corrective action, but any
5 time anybody works, they should be paid. So I
6 don't know if this woman worked these days or
7 this time. I don't know what the circumstances
8 were.

9 Q. But she was clocked in for time for
10 which she wasn't compensated, is that accurate?

11 A. That appears to be the case, yes.

12 Q. You said that the time pre-shift is a
13 different story, so let's talk about that.

14 A. Okay.

15 Q. Do you know what time rounding is?

16 A. Yes.

17 Q. What is your understanding,
18 Mr. Nuttall, of what time rounding is?

19 A. At JFK, in this bargaining unit, they
20 are able to punch in up to ten minutes prior to
21 their shift's start time and the start time will
22 then be automatically brought to their scheduled
23 time.

24 So in this case with Ms. Gomez, if she
25 punched in eight minutes prior to her shift time,

1 J. NUTTALL

2 and we didn't get into the rest of the week, and
3 it appears that she wasn't paid according to when
4 she's clocked in, is that accurate?

5 MR. RAO: Object as to form.

6 A. I would say because meal break periods
7 in the DHL handbook is a subject that's addressed
8 in the contract, this does not apply to Ms. Gomez
9 and this, I'm sorry, by this I mean in the
10 employee handbook, does not apply to Ms. Gomez
11 for this particular issue and she -- her meal
12 period is governed by the collective bargaining
13 agreement. So I would say in the handbook, this
14 section is irrelevant to Ms. Gomez.

15 Q. And in the CBA, Ms. Gomez is entitled
16 to a 30-minute unpaid meal break, right?

17 A. Correct.

18 Q. But she's supposed to be paid for all
19 time clocked in?

20 A. All time that she works, she is to be
21 compensated, yes.

22 Q. And again, looking at Nuttall 3, it
23 appears that she's clocked in prior to the
24 30-minute lunch break, at least on 2/21 and 2/22;
25 however it happens that she was not compensated

1 J. NUTTALL

2 for the time that she had clocked in, is that
3 accurate?

4 MR. RAO: Object as to form.

5 A. For the time which she worked. I don't
6 know the circumstances if she worked during that
7 period of time or if she didn't work during that
8 period of time, but all time for which she
9 worked, she should be compensated.

10 MR. RAO: Let's take a break.

11 (A break was taken.)

12 EXAMINATION CONTINUED

13 BY MR. GALLAWAY:

14 MR. GALLAWAY: Can you read back the
15 last question and answer?

16 (The requested portion of the record
17 was read by the court reporter.)

18 Q. While employees are clocked in at DHL,
19 are they supposed to be performing work-related
20 duties?

21 MR. RAO: Object as to form.

22 A. For the most part, with some
23 exceptions.

24 Q. What exceptions?

25 A. The pre-start. Someone punches in

1 J. NUTTALL

2 eight minutes before, like Ms. Gomez did, they're
3 permitted to punch in up to ten minutes because
4 you have a bargaining unit of 28 people and one
5 time clock, so they can't all punch in right at
6 the start time. So they have up to ten minutes
7 prior to. They are directed that they're not to
8 perform work until their start time and be
9 prepared to start at their start time.

10 Q. I'm sorry, you can finish.

11 A. So the -- the idea is everybody can be
12 on time and be punched in and be at their
13 workstation at the time they're supposed to be
14 there to begin work. If they are going to
15 perform work, they're to get prior approval
16 because it's overtime because if you're going to
17 work prior to your shift time under the contract,
18 I can't change your end time. So anything you
19 work before your start time is overtime, and all
20 overtime is supposed to get prior approval. So
21 they're not supposed to work, and they're told
22 yes, you can punch in ten minutes prior to, but
23 you're not to perform work until your start time.

24 Q. Who directs them to not perform work
25 until their start time?

1 J. NUTTALL

2 A. Their supervisors.

3 Q. And you obviously did tell me it was
4 Mr. Cluska previously --

5 A. No, their supervisors. I told you,
6 were Ms. Sinque and Mr. Kane, and there's been
7 other ones throughout, and then the manager,
8 there's -- currently there is not a clearance
9 manager. Historically, there has been one.
10 Recently, Angela Gomez left the company, the
11 position is not yet filled, and so there's not a
12 clearance manager now, but there has been and he
13 would have told them as well.

14 Q. Approximately how many clearance
15 managers are there on any given shift, currently?

16 A. Okay, supervisors. There's two
17 supervisors. There is generally one supervisor
18 on a shift, and there are actually some shifts
19 that don't have a supervisor and they are
20 supervised by the people -- the supervisors that
21 are in -- downstairs. So I think it's just
22 during the weekend that they don't have complete
23 coverage.

24 Q. How long does it take to clock in,
25 approximately?

1 J. NUTTALL

2 Q. And shifts for those five or ten people
3 would start at the same time?

4 A. Yes.

5 Q. Okay. So if you have five or ten
6 people signing in for a shift and it just takes a
7 few seconds for them to sign in, are they
8 instructed not to perform work once they've
9 clocked in, up until the start of their shift?

10 A. If it's prior to their start time, yes.

11 Q. They're told to sit at your desk and do
12 nothing?

13 A. They're -- there's a break room, and I
14 believe the break room is right outside -- the
15 clock is right outside the break room, so yeah,
16 if you punch in eight minutes before your shift,
17 you can go in get a cup of coffee, get yourself
18 together, go to your desk. Do whatever you need
19 to do, but just be near your desk and be ready to
20 work at your start time. That's the general
21 instruction.

22 Q. And is it your testimony that every
23 time, correct me if I'm wrong, every time an
24 employee sits at their desk and performs work
25 prior to their start time, they're supposed to

1 J. NUTTALL

2 A. Lunch is a different issue. The
3 pre-shift, yes. If you go and you clock in and
4 you don't tell anybody and no one asks you to
5 work and nobody knows that you're working, you
6 would need to say, hey, by the way, I started
7 working right away. After they've been told not
8 to.

9 Q. Well, what do you mean -- I'm just
10 focused on the circumstances, not when they've
11 been told not to work, but if an employee has
12 clocked in early, as Ms. Gomez did on February
13 21, 2011, at 2:52 a.m., and let's say that in
14 this circumstance, Ms. Gomez's manager didn't
15 specifically request that she work overtime and
16 Ms. Gomez didn't alert her manager that she was
17 working overtime, but she just sat at her desk
18 and started performing work from 2:52 onwards.

19 A. Right.

20 Q. The burden would thus be, in that
21 situation, on Ms. Gomez to be compensated for
22 that additional eight minutes, isn't that
23 accurate?

24 A. Correct, yes.

25 Q. Okay.

1 J. NUTTALL

2 A. I mean, there is a directive out there
3 not to do that. So when she's doing something
4 that she's directed not to do, we assume she's
5 not doing it, and if she does do it, she has to
6 make us aware of it and at that point, then we
7 would pay her.

8 Q. And employees at DHL should be
9 compensated for all the time they're clocked in
10 and performing work, is that accurate?

11 A. You've said that three times, and I've
12 corrected you three times. They should be
13 compensated for all hours that they work. If she
14 clocks in at 2:52 and doesn't perform work until
15 3:00 a.m. like she's supposed to, then she's not
16 going to be compensated from 2:52 to 3:00 a.m.,
17 she's going to be compensated from the time she
18 starts to work until the time when she goes home.

19 Q. That's not the question I asked. The
20 question I asked was, DHL should compensate their
21 employees for all time in which they are clocked
22 in and performing work, is that accurate?

23 A. Oh, and performing work, I apologize,
24 yes.

25 Q. Who would be the person that's most

1 J. NUTTALL

2 whether or not it is.

3 Q. Okay. Besides the one complaint about
4 compensation that was sent to you via e-mail in
5 April from Deb Contello, you testified earlier
6 that you haven't received any other grievances in
7 paper or electronic form regarding pay practices
8 from your employees?

9 MR. RAO: Object as to form.

10 A. I haven't received any grievances that
11 are similar to this subject of this litigation,
12 pre-shift, rounding, lunch issues. Don't have
13 grievances on those.

14 Q. But you have received grievances
15 regarding overtime, but just relating to
16 seniority, is that accurate?

17 A. Correct.

18 Q. How about any complaints from the Power
19 Line, you never received anything from that?

20 A. No.

21 Q. Do you know if DHL has an annual budget
22 that's allotted per facility?

23 A. Yes.

24 Q. Yes, there is a budget per facility?

25 A. Yes.

1 J. NUTTALL

2 to see are they actually at their computer, is
3 their computer on, are they working. He was
4 unable to determine whether the computer was
5 turned on or not.

6 Q. If, for example, an employee sent out
7 an e-mail from their terminal prior to when they
8 were scheduled to start working, would you
9 consider that an indicator of when an employee
10 had begun work?

11 A. Well, if it was a work e-mail, I
12 suppose. Yeah, I did not ask Joe to do that. I
13 just asked Joe if he could find the login
14 information and he came back and said he was
15 unable to do that. He didn't -- while we reserve
16 the right to visit or look at all e-mails that
17 any employee sends out, we generally don't do
18 that, you know. So we just checked to see what
19 time they started, and we couldn't determine when
20 it was.

21 Q. And then you couldn't determine, or you
22 couldn't ascertain the login info from trying to
23 get it off the computer, and then you and
24 Mr. Russo tried to review video footage to see if
25 these employees were at their desks prior to the

1 J. NUTTALL

2 time that they were on the clock receiving pay,
3 correct?

4 A. Well, Joe did. Not Joe and I. Joe
5 reviewed the video, I did not review the video.
6 Joe reviewed it, and he got back to me.

7 Q. Prior to doing this background
8 investigation, trying to see when an employee
9 logged into their computer, trying to review
10 video footage, did you ever go up to and ask
11 these employees before conducting this
12 investigation whether or not they were performing
13 work prior to their scheduled start time?

14 A. No.

15 Q. Why?

16 A. The steward asked me not to.

17 Q. Why would the steward ask you not to
18 speak with the employees to ascertain that
19 information?

20 A. I think that's addressed in the other
21 e-mail, I'm not sure, but Deb was basically
22 saying, she wasn't looking to get anybody in
23 trouble, she just wanted whatever was happening
24 to stop, and she wanted to get to the bottom of
25 it. So she asked me not to speak to employees,

1 J. NUTTALL

2 and I said, okay, this is how I'll try and do it.

3 And then, I think as you go down in this

4 paragraph, I said to Alain, to do exactly that.

5 To, you know -- you can't figure it out behind

6 their backs, now let's try and -- let's go right

7 at them and talk to them.

8 Q. And then, you're referring to the next

9 sentence where it says, "Could you please

10 interview each of these employees and ask them

11 point blank if they're performing any work prior

12 to clocking in." Right?

13 A. Correct.

14 Q. Do you know if Alain asked these

15 employees point blank if they were performing

16 work prior to clocking in?

17 A. Yes, he did.

18 Q. And how did they respond?

19 A. I believe they told him no, they were

20 not, it was not going on.

21 Q. They told Alain Romulus that they were

22 not performing work?

23 A. I believe so, yeah.

24 Q. But they had previously complained, at

25 least to their shop steward that they were

[Page 115]

1 J. NUTTALL

2 performing work off the clock, hence the reason
3 for the initial e-mail, right?

4 A. I don't know that. You asked that
5 before, and I want to be clear. Deb Contello
6 brought these issues to my attention. She never
7 told me that employees came to her and said this.
8 Deb Contello can -- I believe Deb Contello has
9 filed grievances regarding overtime issues that
10 were not brought to her by employees, but that
11 she looked and sought them out. So I'm not
12 100 percent sure that employees came to her and
13 complained they weren't getting paid for their
14 time. To me, and part of my thought process on
15 this was that this might be her observation and
16 her view. I don't know that people were coming
17 to her. They may have been, but she did not tell
18 me they were, and I didn't assume it.

19 Q. Does Deb Contello have an office at the
20 JFK facility?

21 A. She has a desk. She's a clearance
22 agent, and they work in an open area where all
23 their desks are, and while she's the steward,
24 she's also an agent, I believe she's a senior
25 clearance agent and she works at a desk where all

1 J. NUTTALL

2 on the lunch issues, swiping or not swiping, she
3 doesn't know if the person sitting next to her
4 has swiped in or swiped out. So I'm not -- I'm
5 not sure she would.

6 Q. Do you know if Deb Contello works the
7 same or similar shifts as these individuals?

8 A. I believe Deb Contello works 9:30 to
9 6:00, Monday through Friday, and I know her
10 schedule a little bit better than other employees
11 because she's the steward and from time to time,
12 I have to deal with her. I don't deal with the
13 other employees. I believe that that is not an
14 unusual start time. They are staggered
15 throughout the day. Deb is fairly senior, so she
16 would get her choice of times, but I don't know
17 what the other start times that other employees
18 have.

19 Q. The next sentence says, "If they are,"
20 in relation to whether or not they have been
21 clocking in early and performing work-related
22 duties. The sentence says, "If they are, have
23 they been asked/directed to do so, and if so, by
24 whom?" You asked this question to Alain Romulus.
25 Did he come back to you with an answer on that?

1 J. NUTTALL

2 A. Well, he came back to me with an answer
3 that the employees said they weren't performing
4 work. So if they weren't performing work, then
5 they weren't being asked to or directed to. He
6 didn't answer that specific question, he said
7 that the employees said that they weren't doing
8 work.

9 Q. When did, and I'm referring to the
10 first sentence here, Ms. Contello say to you that
11 employees like Ms. Diaz, Ms. Karkini, Ms. Dhun
12 and Ms. Valenti were coming into work 30 minutes
13 or more prior to their scheduled start shift and
14 beginning to work?

15 A. She spoke to me, and again, that other
16 e-mail that you have, I think she spoke to me
17 prior to that e-mail and said, shortly prior to,
18 I don't know exactly, but probably within a week
19 prior to that other e-mail, saying that this was
20 happening. I recall telling her I have trouble
21 believing that this is happening because this is
22 a group of employees that files a lot of
23 grievances, and I wouldn't expect that they're
24 working and not getting paid, and I said that to
25 her, and she then sent me the e-mail with

[Page 130]

1 J. NUTTALL

2 page 1 -- no, page 2, to Tom Conelias, who is the
3 business agent in charge of that local -- he
4 works for the local, and he's in charge of that
5 bargaining unit, and you'll see in the middle of
6 the paragraph, I said that, "you should know that
7 Alain is going to speak to some of these
8 employees and ask them outright if they're
9 working off the clock, and if so, are they being
10 directed to do so. I know this is not your
11 preferred way of getting to the bottom of this,
12 but if it's really happening, we have to impress
13 upon all involved," et cetera. This was because
14 the union specifically asked me not to talk to
15 the people. They wanted to find out whether or
16 not it was happening, but they didn't want us to
17 speak with the employees.

18 Q. Did Alain speak with some of these
19 employees and ask them outright if they're
20 working off the clock and if so, are they being
21 directed to do so?

22 A. Yes, he did.

23 Q. And did you follow up with Alain to see
24 what was the result of these conversations?

25 A. Yes, he said that they said they were

1 J. NUTTALL

2 not being directed to work off the clock, and
3 they were not, in fact, working off the clock.

4 Q. Would these employees have been
5 reprimanded if they were working off the clock
6 without receiving prior approval?

7 A. In this circumstance, no, because --
8 well, let me say this. If the allegations were
9 correct, that they were being directed to do so
10 and not being paid, no, they wouldn't be, because
11 if we were directing the employees to work and
12 they worked and we weren't paying them, they
13 weren't going to get reprimanded, the supervisors
14 probably would have, but they certainly would not
15 have.

16 Q. But what about in the alternative, when
17 they didn't necessarily direct an employee to
18 work off the clock, but they took it upon
19 themselves to do so, perhaps because there was so
20 much work that had to get done, would they be
21 reprimanded if they attempted to receive overtime
22 compensation for that time in which they were not
23 authorized to get overtime?

24 MR. RAO: Object as to form.

25 A. No. If you look at Nuttall Exhibit 6,

1 J. NUTTALL

2 quoting, "no one should be at their work station
3 doing anything until 5 minutes," which is in
4 quotations, "prior to their start time, or at
5 their desk for their lunch or breaks, and I think
6 that needs to be rolled called to all employees
7 as well."

8 A. I don't know why she said "five
9 minutes." I don't know why they -- I wouldn't
10 want them at their workstation until their start
11 time. I don't know why she said five minutes.

12 Q. But you read this e-mail, right?

13 A. Yes, I did.

14 Q. Did you ever respond to Ms. Contello
15 and say anything about this five minutes?

16 A. I did not.

17 Q. Nuttall Exhibit 5, paragraph 3, I'm
18 looking at the first page. In the middle of that
19 paragraph, there's a sentence that begins, "As we
20 discussed, an employee may be permitted to work a
21 small amount of overtime, 15 to 20 minutes at the
22 end of the shift, to finish up whatever they are
23 doing." Is that 15 to 20 minutes the standard
24 amount of overtime that an employee can work at
25 the end of their shift, and if they go above that

1 J. NUTTALL

2 15 to 20 minutes, then they have to get
3 permission from their supervisor?

4 MR. RAO: Object as to form.

5 A. No, that's not what that is at all.

6 Q. Can you explain that?

7 A. Yes. The contract talks about -- well,
8 we were having issues with overtime assignment.
9 From time to time, the overtime that comes with
10 this unit expands and contracts. Sometimes, like
11 I said, you're up to 30 percent overtime and
12 whoever wants to work can work as much as they
13 want and its out there for everybody. Then
14 they -- whether it be from volume flow or just
15 getting a handle on the overtime, it starts to
16 shrink and you get down to maybe 15 percent, and
17 then all of a sudden people have an expectation
18 that they're going to work a certain amount of
19 overtime, so now they start to fight over it and
20 who should get it, who shouldn't. The contract
21 talks very specifically about overtime, first
22 going to, by seniority, to people on shift.
23 There has been some practice, going back years,
24 where they would be calling people in from the
25 next shift early. When really, under the

[Page 174]

1 J. NUTTALL

2 contract, they shouldn't be doing that, and a lot
3 of times where this overtime ends up happening is
4 on the overnight shift where there are the junior
5 people. The senior people have the day shifts,
6 and they'll come in at 5:00 in the morning, 6:00
7 in the morning, 7:00 in the morning, and they
8 come in and see people who were supposed to be --
9 whose shift ends at maybe 3 o'clock in the
10 morning or 4 o'clock in the morning, they're
11 still working, and they say why is he working and
12 you didn't call me in. So we started getting a
13 lot of grievances. I told the supervisors to
14 remind them, because the contract says people who
15 are -- the overtime at the end -- if there's work
16 to do at the end of the shift, it should be
17 assigned to the people on shift, by seniority.

18 The union was not happy with that.
19 They said, hey, we've always called people in, we
20 should continue to call people in. The senior
21 people who are the day people, they want to get
22 called in, they wanted overtime, and personally,
23 I don't care who gets it as long as it doesn't
24 cost the company any more. As long as -- if
25 you're a 7 o'clock employee and I need you to

[Page 175]

1 J. NUTTALL

2 come in at 4 o'clock, if I have three hours, I
3 don't care if you get it or if somebody that's
4 getting off at 1:00 a.m. works until 4:00, it
5 makes no difference, as long as operationally.
6 So seniority is one issue that I -- I basically
7 give it to the union.

8 So I said listen, let's get together,
9 let's have -- let's come to an agreement as how
10 we're going to assign overtime because I just
11 can't deal with these grievances because if I do
12 it one way, one group files a grievance, and you
13 want me to pay them, and if I do it the other
14 way, the other group files a grievance and you
15 want me to pay them. So let's come to an
16 agreement on overtime and the assignment of
17 overtime.

18 So we had numerous meetings and quite
19 frankly, in my opinion, the union was all over
20 the place. They didn't have any clear thought.
21 I wrote up an agreement, a draft agreement that I
22 thought was fair and they couldn't come -- they
23 couldn't come to an agreement. So we ended up
24 not -- I think we implemented the agreement while
25 we continued talking. So she's talking about the

[Page 176]

1

J. NUTTALL

2 15 to 20 minutes, that was their position. If
3 there's overtime at the end of your shift and
4 you're just finishing up the tasks that have been
5 assigned, it's going to take you 15, 20 minutes,
6 you're not going to have a more senior person do
7 the last 15 minutes of your work, but if now, I'm
8 going to say, here, here's another entry, do this
9 entry, and it may take you an hour, you should
10 have called somebody else in, and we take the
11 position that's not what the contract says. So
12 we would have -- we would continue to have you
13 work rather than call somebody in. So Deb is
14 saying, as we discussed, an employee may be
15 permitted to work a small amount of overtime, 15
16 to 20 minutes. That was the union's position.
17 It was never my position. If they take on
18 additional tasks, this should go to the senior
19 person on their shift, and that I agree with. If
20 the person's on shift, and I think generally
21 that's what we do, so that's...

22 Q. Fair enough. Between 2007 until the
23 present, has the amount of air traffic and
24 vis-à-vis packages that come in through the JFK
25 facility decreased?

1 J. NUTTALL

2 because of the volume slowdown.

3 Q. Would you say that the 28 people, and
4 by 28, 25 clearance agents and senior clearance
5 agents that have you on staff, are they kept
6 pretty busy?

7 A. I believe so.

8 Q. Okay. If a supervisor or manager is
9 made aware that an employee has been working
10 pre-shift, they should follow up and see if the
11 employee has been compensated for that, correct?

12 MR. RAO: Object as to form.

13 A. Well, there's a couple of ways that can
14 happen. If a supervisor requests somebody, he's
15 got the responsibility to make sure, not just to
16 follow up to make sure that it happened, but he's
17 got the responsibility to make sure they get
18 paid, which hopefully he would be directing
19 people to swipe in, and the time clock can take
20 care of that.

21 If an employee does not request and
22 just continues to work or comes in and starts to
23 work early, if he knows that the employee did
24 that, he should make sure that the person is
25 compensated, try to ascertain as closely to

[Page 179]

1 J. NUTTALL

2 accurate as possible when they came in to make
3 sure they're paid for the time that they worked
4 and address it, possibly through corrective
5 action, if need be, or if an employee comes in on
6 their own and then says to the supervisor, I've
7 -- I came in and started working a half hour
8 before my shift, he should, A, make sure that
9 they're paid, and B, if appropriate, issue
10 corrective action as well.

11 Q. Okay.

12 A. But in all cases, he should make sure
13 that they're paid for all hours worked.

14 Q. Nuttall Exhibit 6, paragraph 2, page 1,
15 please.

16 A. I'm sorry, Exhibit 6, page 2?

17 Q. No, paragraph 2, page 1. The paragraph
18 that starts, "Attached is a copy of three e-mails
19 and a copy of Karen's timecard."

20 A. Yes.

21 Q. You can see that for yourself that she
22 works post-shift every day without getting paid
23 for it, and it is completely on her own, but I
24 will say that your supervisor should be aware of
25 this, as they are copied in or the clearance

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS	EXAMINATION BY	PAGE
J. NUTTALL	Mr. Gallaway	4-187

EXHIBITS

PLAINTIFF'S	DESCRIPTION	PAGE
Exhibit 1	Collective Bargaining Agreement	49
Exhibit 2	Successor Agreement To Collective Bargaining Agreement	49
Exhibit 3	Time Detail	61
Exhibit 4	Employee Handbook	85
Exhibit 5	E-mail Chain	107
Exhibit 6	E-mail	119

(Exhibits retained by reporter.)

REQUESTS FOR PRODUCTION

(None)

INSERTS

(None)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, ALLISON FOWLER, a shorthand
reporter and Notary Public within and for
the State of New York, do hereby certify:

That the witness(es) whose
testimony is hereinbefore set forth was
duly sworn by me, and the foregoing
transcript is a true record of the
testimony given by such witness(es).

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

ALLISON FOWLER

NUTTALL DEPOSITION EXHIBIT 2

TABLE OF CONTENTS

	PAGE
ARTICLE I.....	RECOGNITION 3
ARTICLE II.....	PROBATIONARY PERIOD 3
ARTICLE III.....	UNION SECURITY & CHECK-OFF 4
ARTICLE IV.....	UNION VISITATION PRIVILEGES 7
ARTICLE V.....	MANAGEMENT RIGHTS 7
ARTICLE VI.....	NON-DISCRIMINATION AND ANTI-HARASSMENT POLICIES 8
ARTICLE VII.....	NO STRIKE-NO LOCKOUT 10
ARTICLE VIII.....	INTERVIEWS OF UNIT EMPLOYEES BY MANAGEMENT 12
ARTICLE IX.....	DISCIPLINE 14
ARTICLE X.....	ATTENDANCE POLICY AND DISCIPLINARY PROGRESSIONS 26
ARTICLE XI.....	GRIEVANCE AND ARBITRATION PROCEDURE 28
ARTICLE XII.....	LEAD PERSONNEL 36
ARTICLE XIII.....	PERFORMANCE OF BARGAINING UNIT WORK BY NON-UNIT PERSONNEL 37
ARTICLE XIV.....	SENIORITY, LAYOFF AND RECALL 43
ARTICLE XV.....	JOB BIDDING PROCESS 52
ARTICLE XVI.....	PART-TIME EMPLOYEES 57
ARTICLE XVII.....	WAGES, SHIFT DIFFERENTIAL, OVERTIME 59
ARTICLE XVIII.....	HEALTH AND WELFARE 69
ARTICLE XIX.....	PENSION 73
ARTICLE XX.....	VACATION, HOLIDAYS, AND LEAVE 76
ARTICLE XXI.....	STANDBY PAY AND PROCEDURES 106
ARTICLE XXII.....	UNION BUSINESS 107
ARTICLE XXIII.....	ATTENDANCE/LATENESS CALL-IN REQUIREMENTS AND PROCEDURE 112

i.



DHL 0000000310

TABLE OF CONTENTS
(CONTINUED)

	PAGE
ARTICLE XXIV.....	DHL DUI/DWI POLICY AND PROCEDURE 113
ARTICLE XXV.....	UNIFORM POLICY 115
ARTICLE XXVI.....	CLEAN AND NEAT APPEARANCE 115
ARTICLE XXVII.....	MISCELLANEOUS 116
ARTICLE XXVIII.....	TRANSFER OF EMPLOYER TITLE AND INTEREST 124
ARTICLE XXIX.....	SEPARABILITY (SAVINGS CLAUSE) 125
ARTICLE XXX.....	SCOPE OF BARGAINING 125
ARTICLE XXXI.....	DURATION 126

Firmwide:87624234.10 046629.1108

subject or matter not specifically referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or executed this Agreement.

Nothing herein contained shall preclude both parties hereto from mutually agreeing to modify or alter the terms and conditions of this Agreement during its term, provided of course, the decision to do so was mutually and/or jointly made by the Employer and the Union.

ARTICLE XXXI. DURATION

This Agreement shall be effective December 15, 2009 (ratification date), and shall continue in full force and effect, without reopening of any kind as expressly provided herein, to and including twelve midnight on February 28, 2014.

Either party desiring to modify, change, or terminate this Agreement shall notify the other, in writing, at least sixty (60) calendar days prior to the expiration date of this Agreement. Should the parties fail to reach an agreement on proposed modifications by the expiration date, this Agreement shall terminate, unless extended in writing by the mutual consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this

16th day of February, 2014

DHL EXPRESS (USA) INC.

By: _____

By: _____

By: _____

LOCAL 295, I.B.T.

By: _____

By: _____

By: _____

PREAMBLE

AGREEMENT made and entered into this 15th day of December 2009 ("Ratification Date"), by and between **DHL EXPRESS (USA), INC.**, hereinafter the "Employer," "Company," or "DHL," and **LOCAL 295 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA**, formerly Local 851, hereinafter the "Union" or "Local 295 (formerly 851)," to govern all hours, wages and working conditions of employment of all covered bargaining unit employees to continue from February 28, 2009 to and including twelve midnight on February 28, 2014.

WHEREAS, the Union has been certified by the Regional Director, Region 29 of the National Labor Relations Board (hereinafter the "NLRB") in Case No. 29-RC-10177 and the Employer recognizes Local 295 (formerly 851) as the sole and exclusive collective bargaining representative of the employees covered by this Agreement; and

WHEREAS, the Employer and the Union desire to enter into an agreement relating to wages, benefits and other terms and conditions of employment which will provide methods of harmonious cooperation between the Employer, its employees and the Union, and to that end accomplish fair and peaceful adjustment of disputes which may arise without work stoppages or other interruptions of the Employer's business during the life of this Agreement; and

WHEREAS, the parties agree that it is fundamental that DHL has the right to run its business and direct its work force, subject to the conditions set forth in this Agreement. It is equally fundamental that if any dispute occurs regarding a term of this Agreement or action by DHL, that dispute must be handled through the grievance process, unless otherwise provided herein; and

WHEREAS, DHL and the Union recognize that workers and management employees should be treated with dignity and respect and that managers and workers alike must perform their

jobs professionally and that their behavior must reflect positively on DHL and Local 295. Neither party will tolerate any behavior which constitutes harassment, insubordination, intimidation ,or which discriminates or retaliates against any worker for properly exercising his rights under this Collective Bargaining Agreement, particularly the right to submit grievances and to have them handled fairly and expeditiously. Nor shall either party tolerate such actions when directed against a supervisor or manager who is engaged in the proper discharge of his managerial duties;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is mutually agreed as follows:

ARTICLE I. RECOGNITION

A. The Employer, a Delaware corporation, hereby recognizes Local 295 (formerly 851) as the sole and exclusive collective bargaining representative of the following employees: all regular full-time and part-time Clearance Clerks, Clearance Agents, and Sr. Clearance Agents. In addition, a Lead Person may be assigned as the Employer deems appropriate to fulfill the operational needs of the business.

B. All other employees, trainers, administrative assistants, managers, professional employees, technical service employees, any and all employees within the units certified by the Regional Director, Region 29, NLRB in Case No. 29-RC-10176 (i.e., all employees in the operations department who are employed as international service agents, lead international service agents, load planning agents, facility maintenance mechanics, courier guards (drivers)), and in 29-RC-10187 (i.e., all fleet maintenance mechanics) and/or any other classification now encompassed or subsequently added to the DHL/Local 295 (formerly 851) recognized contractual unit at Building 263, guards and supervisors as defined in the National Labor Relations Act (hereinafter called the "Act") are expressly excluded from the bargaining unit covered by this Agreement.

ARTICLE II. PROBATIONARY PERIOD

A. All employees within the unit covered by this Agreement who are hired on or after the effective date hereof shall be subject to a probationary period for thirty (30) regularly scheduled work days on which work is actually performed, commencing with the first day on which the probationary employee regularly performs work for the Employer. Days lost from work for any reason during the probationary period shall not be considered in computing such time period.

B. Seniority shall not accrue during the probationary period. Upon the successful completion of the probationary period, an employee's seniority shall relate back to and be calculated from his date of hire.

C. The Employer may lay off, discharge, or discipline probationary employees, and Employer's actions with respect thereto shall not be subject to the Grievance and Arbitration Procedures of this Agreement.

D. Unless otherwise expressly provided herein, probationary employees shall not be entitled to any of the fringe benefits set forth in this Agreement during their probationary period. There shall be no retroactive payment for same upon the successful completion of such period. However, probationary employees shall be paid the contractual minimum wage rate for the classification in which they were hired during their probationary period.

ARTICLE III. UNION SECURITY & CHECK-OFF

A. Union Shop

1. It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing (as hereinafter defined in A.2(i) below) on the effective date of this Agreement shall remain members in good standing. Those employees of the Employer covered by this Agreement who are not Union members on the effective date of this Agreement shall, on or after the thirty-first (31st) day following the effective date of this Agreement or the execution thereof, whichever is later, become and remain members in good standing in the Union. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its effective date or the execution thereof, whichever is later, shall on or after the thirty-first (31st) day following the beginning of such employment become and remain members in good standing in the Union

2. (i) For the purposes of this Article, "membership in good standing" shall mean the payment of periodic dues and the initiation fee(s) uniformly required by the Union as a condition of acquiring or retaining membership in the Local.

- (ii) Any unit member who declines to become a member of the Union shall nevertheless be required, as a condition of continued employment with the Employer in the contractual unit, to remit payment to the Union on the same basis as set forth in Paragraph D.1. herein in a sum equal to the amount of the Union's periodic dues and uniform initiation fee(s).

B. An employee who has failed to acquire or thereafter maintain membership in the Union as herein provided in A.1 above, or to pay initiation fees or periodic dues as provided in A.2.(i) or an equivalent sum as set forth in A.2.(ii) above, shall be terminated seventy-two (72) hours after the Employer receives written notice from an authorized representative of the Union certifying that membership in good standing (as defined in A.2(i) above) has been (and continues to be) offered to such employee on the same basis as all other members and that the employee has had notice and opportunity to make all dues, initiation fee or equivalent sum payments yet has failed to do so.

C. Change in Law

In the event of any change in the law during the term of this Agreement, the Employer agrees that the Union will be entitled to receive the maximum lawfully permissible Union security.

D. Dues Check-Off

1. Upon receipt of a signed written assignment form from a unit employee expressly authorizing the Employer to deduct periodic Union dues and uniform Union initiation fee(s), or a sum equivalent thereto, the Employer shall deduct said sum from each paycheck provided to such unit employee and thereafter remit same to the duly authorized representatives of the Union on a monthly basis. Such remittance shall be accompanied by a list showing the names of the employees from whom deductions were made and the amount of such deductions. The written assignment shall not be irrevocable for a period of more than one (1) year or beyond the termination date of this Agreement, whichever occurs sooner.

2. Check-off by the Employer shall commence no sooner than the first (1st) pay period in the month following the day on which the executed written assignment form is received by the Employer.

3. When an employee who is on check-off is not on the payroll for any reason, the employee must make arrangements with the Union to pay such dues and fee(s), if any, or a sum equivalent thereto, in advance.

4. The amounts of the Union's periodic membership dues and/or uniform initiation fee(s) will be certified to the Employer in writing by the Financial Secretary of the Union. A certification from said Financial Secretary which changes the amount of such dues or fees shall become effective, (from a check-off standpoint only), no later than the first (1st) day of the month following a period of thirty (30) days after the date of receipt of the certification by the Employer.

E. Indemnification

The Union shall indemnify and hold the Employer harmless from all monetary liabilities resulting from a judgment, decree or order issued by a court of competent jurisdiction, arbitral panel,

or administrative agency against the Employer in connection with (i) action taken by the Employer at the express request of the Union for the purpose of complying with the provisions of this Article, or (ii) the Employer's reliance on any list, certification, notice or assignment furnished by the Union hereunder.

ARTICLE IV. UNION VISITATION PRIVILEGES

A. Authorized agents of the Union may visit and have access to the Employer's Building 263 facility at reasonable times during regular business hours, for the purpose of adjusting disputes, investigating working conditions and ascertaining that the Agreement is being adhered to, under the conditions stated herein.

B. For purposes of this Article of the Agreement only, "Union Representative" refers to individuals actively employed and paid by either the International or Local Union, and excludes any and all actively employed unit employees, including stewards.

C. Upon arriving at the Building 263 facility, the Union Representative shall announce his presence to the Employer and, during the course of such visit, the Union Representative shall conduct himself in a manner that does not interfere with the Employer's operations. As may be required by applicable governmental agencies, a management official or supervisor shall accompany the Union Representative during his exercise of the visitation privileges herein provided.

ARTICLE V. MANAGEMENT RIGHTS

Except as otherwise expressly provided herein, the Employer shall have the right to manage its business, including, but not limited to, the right to control and supervise all operations and direct all working forces, to maintain discipline among employees, to determine and change from time to time the methods, processes and working procedures to be used, to hire, promote, assign, and transfer employees, to increase or decrease the number of employees, to assign work and duties to

any employees in accordance with the Employer's determination of the needs of the respective jobs, to layoff, suspend, or discipline employees, to discharge employees for cause, to expand or curtail its operations, and to close or discontinue its operations or any part thereof.

ARTICLE VI. NON-DISCRIMINATION AND ANTI-HARASSMENT POLICIES

A. Non-Discrimination

1. The Employer agrees not to discriminate against any individual with respect to hiring, compensation, terms or conditions of employment because of such individual's membership in any class protected by applicable federal, state or local law, including, but not limited to, his race, color, religion, sex, sexual preference, national origin, age, handicap or mental or physical disability as provided in the Americans with Disabilities Act ("ADA") or applicable state law. Further, the Employer agrees that it will not limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his membership in any class protected by applicable federal, state or local law, including, but not limited to, his race, color, religion, sex, sexual preference, national origin, age, handicap, or mental or physical disability as provided in the ADA or applicable federal, state, or local law. It is expressly understood and agreed that notwithstanding anything contained in this Agreement to the contrary, the Employer may take any and all actions necessary to comply fully with the provisions of the ADA, Family and Medical Leave Act, or applicable federal, state, or local law.

2. The Employer agrees that it will not discriminate against any employee because of his membership in the Union or because of any employee's lawful activity and/or support of the Union.

3. Whenever any words are used in this Agreement in the masculine gender, they shall be construed as if they were also used in the feminine gender.

B. Complaint Procedure

1. Sexual harassment, as herein defined, is a violation of the law, as well as harassment or discrimination on the basis of any other protected characteristic, will not be tolerated or condoned by either party. Sexual harassment is defined as: (i) any unwelcome sexual advances, requests or demands for sexual favors; or, (ii) any statements or actions of a sexual nature which create a hostile working environment for an individual employee/reasonable person. This includes such actions by managers, supervisors, co-employees, union officials, and third parties. Other prohibited harassment is defined as: (i) verbal conduct such as making or using derogatory comments, threats, epithets, slurs, explicit or offensive jokes, or comments about characteristics related to one's legally protected status; (ii) visual conduct such as gestures or the display or dissemination of derogatory objects, pictures, articles, drawings, cartoons, letters, notes, invitations, photographs or posters; and (iii) offensive physical conduct such as assault, unwanted touching, or impeding or blocking normal movements. A copy of this Article shall be posted at a conspicuous place in each covered facility.

2. **Procedure:** An employee who believes that he has been the victim of harassment or discrimination shall promptly report the complaint to the Company, so the Company can discharge its legal responsibility to investigate and resolve it. In doing so, the employee may report the complaint to local management or to Director of Human Resources, at the employee's election. If the employee prefers to make the report to someone of the same gender, then that will be arranged.

3. **Investigation:** When the Company receives a complaint of harassment or discrimination, it shall promptly investigate it, taking into consideration the rights of all parties, including the individual accused of harassment or discrimination. If the accused is a co-employee, and is compelled to attend an investigatory meeting which he reasonably believes may lead to discipline, the accused co-employee may request Union representation at that meeting, consistent with Weingarten.

4. **Discipline:** If the investigation finds that there was harassment or discrimination, the Company will impose appropriate discipline, up to and including discharge.

5. **Non-Retaliation:** No employee may retaliate against another employee who has filed a charge of harassment or discrimination. If the investigation finds that there was retaliation, such a finding shall be an independent ground for discipline, up to and including discharge.

6. **Confidentiality:** The complaint, investigation and resolution will be handled with as much confidentiality and discretion as the situation permits, consistent with the Company's legal duty to investigate and resolve the matter.

7. **Monitoring:** To ensure the continued effectiveness of this policy, the Employer agrees to provide on-going training and education and will monitor the effectiveness of the program.

ARTICLE VII. NO STRIKE-NO LOCKOUT

A. Except as otherwise expressly provided herein, the Union, on behalf of itself, its officers, Executive Board members, trustees, stewards, agents, representatives and members, and the Employer, on behalf of itself, its officers, management and supervisory personnel, representatives and agents, mutually warrant, guarantee and promise that during the term of this Agreement and any extension thereof there shall be no lockouts and no strikes of whatsoever kind or nature, work stoppages, slowdowns, walkouts, sit-downs, tie-ups, sick-outs, concerted refusals to perform customary work duties during the regular work shift and/or on an overtime basis, picketing, boycotting and/or any other activity or conduct which interferes with the Employer's business operations, concerning matters, issues, disputes, controversies, problems or grievances properly subject to and encompassed by the Grievance and Arbitration machinery of this Agreement. The Union further warrants that it, on behalf of itself, its officers, Executive Board members, trustees, stewards, agents, representatives and members, will not sanction any picket line or other concerted activity against the Company by any other local union not signatory to this Agreement, to the extent the other Union's activity is in furtherance of demands exceeding the terms set forth in the parties' Agreement.

B. It shall not be a violation of this Agreement, and it shall not be cause for discharge, disciplinary action or permanent replacement in the event an employee refuses to enter upon any property involved in a lawful, primary labor dispute, or refuses to go through or work behind any lawful, primary picket line, including the primary picket line of Unions party to this Agreement, and including lawful, primary picket lines at the Employer's places of business. In such circumstances, the Employer may exercise its lawful rights to get the work done.

C. The Union shall not be held responsible or liable for damages resulting from any conduct or acts of individuals in violation of the provisions of Paragraph A of this Article, provided the Union, acting by and through its officers, Executive Board, members, trustees, stewards, agents and representatives, has not authorized, approved, sanctioned, ratified, condoned or in any way acquiesced in such unlawful conduct. Indeed, upon notification that individuals are engaging in conduct prohibited by Paragraph A, above, the Union shall promptly undertake every reasonable means at its disposal to effectuate the cessation of such unlawful activity. The Union shall not be required to purchase air time on radio or television in order to fulfill its responsibilities hereunder.

D. Except as otherwise provided in Article XI (Grievance Procedure) of this Agreement, any claim, action, or suit for damages or injunctive relief, which is commenced by the Employer as a result of the Union's violation of this Article, shall not be subject to the arbitration provisions of this Agreement.

E. Failure of either party to this Agreement to comply with an arbitrator's decision and award within fourteen (14) calendar days after the issuance thereof will remove the restrictions against economic recourse set forth in Paragraph A, above by the other party hereto.

ARTICLE VIII. INTERVIEWS OF UNIT EMPLOYEES BY MANAGEMENT

A. In the event an employee is required to attend an investigatory interview with a supervisor or other management official which he reasonably believes will result in disciplinary action, any readily available Local 295 (formerly 851) steward at the terminal location in which the employee is employed may be present and participate at such investigatory interview, if requested by the employee, under the following conditions:

1. The steward may consult with the employee, assist him in presenting or clarifying facts and/or otherwise submit evidence or suggest further witnesses to interview.

2. The steward, however, may not interfere with the Employer's interview of the employees. In this regard, it is expressly understood and agreed that the Employer has no obligation to bargain with the steward during such interview and that the employee shall answer personally all relevant and material questions posed to him by the Employer.

3. If no steward is available, the employee shall be afforded the opportunity to telephone the Union's Business Representative who, in turn, may attend the investigatory interview in place of the absent steward or, in lieu thereof, the Union Representative shall designate another bargaining unit employee as an official Union representative. The Employer shall have no right to designate the designee for the Union Representative. It is understood and agreed, that if no steward is available and the Business Agent is unreachable by telephone, the interview shall not take place until either the steward is present or the Business Representative is contacted. It is further understood and agreed that if the steward or Business Representative refuse to participate in the interview, or if the Business Representative refuses to designate an available employee to serve as the affected employee's representative, the right to representation shall be waived and the Employer may proceed with the interview in the absence of the steward and/or Business Representative.

4. The principal purpose of an investigatory interview is to enable the parties to conduct a just and thorough investigation of the incident in question, at the earliest possible stage, thereby ensuring that there is no miscarriage of justice. Under no circumstances will it be used to violate the Weingarten rights of the employees.

ARTICLE IX. DISCIPLINE

A. The discipline, suspension or discharge of an employee covered by this Agreement shall be for "just and sufficient cause," as such term is expressly utilized and defined in each of the four (4) categories of disciplinary offenses/infractions set forth herein. The Employer further agrees to recognize and abide by the practice of progressive discipline. Accordingly, except in cases of Category "A" serious offenses, discipline for Category "B" offenses and/or Category "C" and "D" infractions, as set forth below, shall be implemented in strict accordance with the respective progressive disciplinary steps therein stated. As used herein for Category "B" offenses and Category "C" and "D" infractions, the term "subject to" simply means that the Employer may impose progressive discipline "up to and/or including" the highest disciplinary penalty stated therein in accordance with its discretion. It is also understood and agreed that the Employer's imposition of a lesser penalty in the exercise of its discretion under the "subject to" provisions shall not constitute or be deemed to constitute a binding practice or precedent for any future cases involving any unit employee.

1. Category "A" Offenses:

"Serious offenses" for which just and sufficient cause for summary discharge shall be deemed to exist shall include but not be limited to the following:

- (i) a. Drunkenness or drinking during work hours (including lunch time, break periods and overtime assignments), or being under the influence of liquor or unlawful drugs during work hours (including lunch time, break periods and overtime assignments), and/or at any time in the Employer's facility, on the Employer's premises, or in an Employer vehicle;
- b. Carrying and/or possessing unlawful drugs or weapons, any guns, or explosives during work hours (including lunch time, break periods and overtime assignments), at any time in the Employer's facility, on the Employer's premises, or in an Employer vehicle;
- c. Carrying and/or possessing alcoholic beverages (excluding gifts, which are not intended to be opened or consumed in the Employer's facility or on its premises) during work hours (including lunch time, break periods and overtime assignments), and/or at any time in the Employer's facility, on the Employer's premises, or in an Employer vehicle *without prompt disclosure to management*;
- d. For the purpose of this Article, the term "Employer premises" or "Employer vehicle" shall be defined as anything that is leased, owned or rented by the Employer;

- (ii) a. Testing positive to a drug and/or alcohol test reasonably requested pursuant to the provisions of Appendix C (Substance Abuse Policies and Procedures) of this Agreement; or
 - b. Refusing to take a drug/alcohol test reasonably requested in accordance with Appendix C (DHL Substance Abuse Policies and Procedures) of this Agreement; or
 - c. tampering, adulterating or substituting urine samples;
- (iii) Knowingly engaging, attempting, or in any way aiding and/or abetting anyone to engage in theft;
- (iv) Knowingly engaging or attempting to engage in the theft or unauthorized use of DHL services (*i.e.*, use of DHL services without proper payment or prior management approval);
- (v) Failing or refusing, upon reasonable request, to submit to a search of person, property, locker or employee vehicle (located on Company premises) in connection with a theft investigation by management/supervisory personnel or security agents, as long as a steward or alternate is present. If neither is available, a member selected by the employee shall be permitted to attend;

- (vi) a. Unprovoked fighting with, assaulting or threatening injury to a supervisor, other Employer representative, customer or employee, during work hours (including lunch period, breaks and overtime assignments) or at any time in the Employer's facility or on the Employer's premises;
 - b. Unprovoked fighting with, assaulting or threatening injury to a supervisor, other Employer representative, customer or employee, while off-duty outside the facility and off premises, provided such activity has a direct nexus to the Employer's business operations;
- (vii) Carrying unauthorized passengers in an Employer vehicle, or using an Employer vehicle for other than Employer business, without prior management approval;
- (viii) Loss of shipments from an employee's assigned vehicle, or loss or theft of an employee's assigned vehicle, due to the employee's negligence; or loss of shipments entrusted to an employee, but not delivered to the intended recipient, for which the employee cannot reasonably explain or account;
- (ix) Engaging in any conduct in violation of the No-Strike provisions of the Collective Bargaining Agreement;

- (x) Willfully falsifying employment application, time records, financial records, delivery receipts, Employer accident reports, expense reports, cartage reports, ULD control, manifests, regulatory documentation, route sheets or other Employer records for the employee's personal benefit or gain;
- (xi) Malicious tampering with Employer's or co-worker's property;
- (xii) Knowingly engaging in a hit and run accident with an Employer vehicle;
- (xiii)
 - a. Negligently engaging in or causing an accident with an Employer vehicle, or other Employer equipment which results in the death of a participant therein; or
 - b. Results in serious bodily injury to a participant therein, requiring hospital admission therefor; or,
 - c. Results in total property damage in excess of \$20,000.00; or
 - d. Otherwise, in any way renders the aircraft non-airworthy;
- (xiv) Willfully failing to report accidents involving Employer vehicles or equipment of which the employee knew or reasonably should have known;
- (xv) Obtaining a leave of absence under false pretenses;
- (xvi) Gross insubordination;

- (xvii) Working for another employer, company or individual (whether or not compensated) engaged in work of the type and nature covered by this Agreement, or on behalf of a competitor of the Employer (*i.e.*, FedEx, UPS, TNT and the like) without prior management approval. (such consent shall not unreasonably be withheld);
- (xviii) Being convicted of any law or statute which legally precludes continued employment; and
- (xix) Proper revocation or suspension of Port Authority identification badge where such badge is required for an employee's position for sixty (60) or more calendar days (during which time the employee shall be suspended without pay).

2. Category "B" Offenses:

Offenses for which just and sufficient cause shall be deemed to exist and warrant the imposition of discipline in four (4) progressive steps for unlike offenses (*i.e.*, 1st Step – Written Reprimand; 2nd Step – Written Warning; 3rd Step – Subject to Suspension of up to 3 days, in management's discretion; 4th Step – Subject to Discharge) shall be as follows:

- (i) Willful failure to display a valid DHL and Port Authority, as may be applicable, identification badges during all working hours (including lunch periods, break periods and overtime assignments), or at any time in the Employer's facility or in an Employer vehicle;
- (ii) Insubordination (i.e., intentional refusal or failure to follow reasonable and clear work directives);
- (iii)
 - a. Negligently engaging in or causing an accident with an Employer vehicle, or other Employer equipment which results in bodily injury to a participant, requiring medical treatment without hospital admission; or
 - b. Otherwise results in total property damage in the sum of \$5,000.00 up to but not in excess of \$20,000.00; or
 - c. In any way involves the hitting of aircraft; or
 - d. Which results directly from the employee's failure (intentional or negligent) to properly secure the DHL vehicle or ground support equipment from movement, including but not limited to failing to place vehicle or equipment in park, setting the parking brake, turning off the ignition and/or chocking as may be applicable.
- (iv) Abusive profanity to supervisors and/or customers;
- (v) Willful discourtesy to a customer, invitee or licensee; and
- (vi) Violation of posted security policies and procedures reasonably promulgated by the Employer.

3. Category "C" Infractions

Minor infractions for which just cause shall be deemed to exist and warrant the imposition of discipline in four (4) progressive steps for each like infraction (*i.e.*, Step 1 - Written Warning; Step 2 – Second Written Warning; Step 3 – Subject to Suspension of up to 3 days, in management's discretion; Step 4 – Subject to Discharge) shall include, but not be limited to the following:

- (i) Violation of operational rules and regulations reasonably promulgated by the Employer;
- (ii) Failure to abide by the Employer's dressing and grooming standards or the Employer's Uniform Policy;
- (iii) Taking unauthorized breaks or meal periods;
- (iv) Engaging in any activity unrelated to the proper performance of the employee's job duties and responsibilities during actual work time, including but not limited to horseplay, gambling, loitering, ball playing, and card playing, and graffiti;
- (v) Willful failure to report parking violations involving an Employer vehicle;
- (vi) Willful failure to report minor accidents with Employer vehicles or equipment (i.e., minor nicks, scrapes, etc.);
- (vii) Engaging in or causing an accident with an Employer vehicle or other Employer equipment which (i) results in minimal bodily injury, if any, and which does not require medical attention and/or hospitalization, or (ii) otherwise results in total property damage less than \$5,000.00;
- (viii) Inappropriate use of Employer's email, voice mail and/or computer system for personal business;
- (ix) Using a personal cell phone or watching a portable media player while working;

- (x) Listening to a portable media player while operating Employer equipment or vehicles; and
- (xi) Failing to wear seat belts while operating a DHL vehicle;
- (xii) Failing to properly complete and/or perform pre and post trip Employer vehicle inspections and paperwork in connection therewith;
- (xiii) Abusive profanity to employees.

4. Category "D" Infractions

Just and sufficient cause shall be deemed to exist and warrant the imposition of discipline in five (5) progressive steps for each (like or unlike) infraction of carelessness or neglectful performance of job duties. The five (5) progressive disciplinary steps are:

1 st Step	First Written Warning
2 nd Step	Second Written Warning
3 rd Step	Subject to Suspension (up to 1 day)
4 th Step	Subject to Suspension (up to 3 days)
5 th Step	Subject to Discharge

B. 1. The progressive disciplinary steps set forth in A.2 (Category "B" offenses) will be applied to unlike offenses, the progressive disciplinary steps set forth in A.3 (Category "C" infractions) will be applied only to like infractions, and the progressive disciplinary steps set forth in A.4. (Category "D" infractions) will be applied for each separate and distinct infraction constituting carelessness or neglectful performance of job duties (whether like or unlike). In addition, depending on the severity of the violation, the progressive disciplinary steps may be accelerated with the joint agreement between the Union and the Employer.

2. Discipline issued under A.2 (Category "B" offenses), A.3 (Category "C" infractions) and A.4 (Category "D" infractions) above, will remain in effect for one (1) year, as provided in Paragraph C. of this Article, below. Any and all absences in excess of ninety (90) days due to FMLA, ADA, Workers' Compensation, Disability, Personal and/or Union Leave, shall not be counted in computing the one (1) year period (i.e., employee engages in and receives a Step 1 warning under Category B on January 1, 2004, gets injured on the job on May 1, 2004 and does not return to full duty until August 1, 2004, the 3 month absence from May 1, 2004 – August 1, 2004, is not counted; assuming no further absences in excess of ninety (90) days, the one year rollback would occur on April 1, 2005 (15 actual months after the occurrence and date of issuance).

C. Notification of and copies of all discipline shall be given to the employee involved, the applicable Union steward and the Local Union Representative. Communications and letters relative to an employee's disciplinary file shall be removed on the three hundred sixty-sixth (366th) calendar day following the day of issuance or the date of occurrence, whichever is later. Once removed, such communications and letters will not be considered a part of such disciplinary record or be used in any proceeding.

D. Credit and Rollback for Category "D" Infractions

If an employee is in the foregoing progression and has no further “similar” (i.e., “like kind” but not necessarily identical offense) infraction for thirty (30) working days from the date of such infraction, the infraction shall be removed from the employee’s file and he shall revert to the prior disciplinary step.

ARTICLE X. ATTENDANCE POLICY AND DISCIPLINARY PROGRESSIONS

A. Categories: There shall be three (3) categories of offenses under the attendance program: 1) tardiness, 2) absence, and 3) pattern absences, as herein defined, i.e.:

1. tardiness: is a failure to complete the scheduled shift (including scheduled pre/post shift work) whether by reason of reporting to work late, or leaving work early. Three (3) incidents of tardiness in a calendar month will be considered excessive and subject to the progressive discipline steps listed below.

2. absence: is a failure to report to work on one (1) or more consecutive work days. Two (2) incidents of absence in a calendar month will be considered excessive and subject to the progressive discipline steps listed below. (Provided, however, if the failure to report to work is due to a contractual holiday, vacation or leave of absence, (excluding sick leave), workers' compensation, ADA, or FMLA, then this period of leave shall not constitute an incident of absence, for the purpose of the attendance policy.)

3. pattern offense: is a sequence of like kind incidents (such as extending a unit employee's regularly scheduled days off, vacation, holidays, or contractual leave of absence) in a given period of time. Three (3) incidents of absence or six (6) incidents of tardiness in a six (6) month period where such absence or tardiness is wrapped around a unit employee's regularly scheduled days off, or holiday, or vacation, or contractual leave of absence establishes an initial pattern offense. Each incident of like kind thereafter shall constitute an additional pattern offense. Each pattern offense will be subject to progressive discipline independent of, or in addition to, (1) and (2) above. Any period of six (6) months following the establishment of a pattern in which the unit employee has zero (0) incidents of a like kind will result in the elimination of the pattern.

B. Progressive Discipline

1. Steps

1st Step.....First Written Warning

2nd Step.....Final Written Warning

3rd Step.....Subject to Suspension (of up to 3 days, in management's
discretion)/

4th Step.....Subject to Discharge

The progressive discipline steps will be applied to unlike offenses.

2. Credit Procedure

(i) If an employee in the progression:

- a. has no further incident for one (1) full calendar month following the month in which the most recent "incident" occurred; and
- b. actually works at least one hundred twenty (120) regularly scheduled work hours (for full-time employees) or seventy (70) regularly scheduled hours (for part-time employees) within such full month period

his current disciplinary step placement shall revert one (1) disciplinary step.

(ii) For each two (2) full consecutive calendar month period in which the employee has no further incident and actually works the applicable, requisite number of work hours set forth in subsection (i), above, in each of the two (2) consecutive months, the next prior disciplinary step shall be dropped.

(iii) In the event the employee ascends to a higher step in the progression, further credits shall be provided in accordance with 2(i) and (ii) above.

(iv) Paid vacation time shall be deemed "time worked" under this credit procedure. However, all other absences of any kind or nature, paid or unpaid, shall not be counted, considered or used as an offset in determining the number of regular hours actually worked by an employee in a month.

ARTICLE XI.

GRIEVANCE AND ARBITRATION PROCEDURE

A. All complaints, disputes, controversies, differences, arguments, problems, and grievances (hereinafter collectively called "grievances") by and between the Union and the Employer and/or between unit employees and the Employer arising on or after the effective date, but before the expiration date of this Agreement, as to the interpretation, application, meaning, import, performance or compliance with the provisions of this Agreement shall be adjusted and settled solely and exclusively in accordance with the procedures set forth in this Article:

STEP 1: Any employee or group of employees having a grievance shall present same, in writing, to their immediate supervisor either alone or together with their steward within ten (10) calendar days after the occurrence of the incident or event giving rise to the grievance or within ten (10) days after the employee(s) should reasonably have become aware of the facts or circumstances constituting the grievance, whichever is later. The written grievance shall clearly specify in detail the nature of the grievance, the articles and sections of the Agreement allegedly violated and the remedy being sought. The immediate supervisor shall answer the grievance within five (5) calendar days after its presentation.

STEP 2: If the written grievance is not satisfactorily adjusted in Step 1, it may be presented to the applicable manager of the grievant or management designee for resolution. The written grievance must be submitted to the applicable manager or management designee within five (5) calendar days after receipt of the Supervisor's Step 1 denial. Within ten (10) calendar days after the submission of the written grievance in Step 2, the Union Business Representative(s) or designee shall meet with the applicable manager or management designee in an earnest effort to adjust the grievance. The parties shall make every effort to schedule Step 2 hearings at a reasonable time so that stewards can complete their work day within eight (8) hours. The employee's manager or his

management designee shall submit a written answer to the grievance within five (5) calendar days after the Step 2 meeting.

STEP 3: If the written grievance is not satisfactorily adjusted in Step 2, it may be presented to the Employer's JFK Gateway Director or his designee for final resolution and adjustment within five (5) calendar days after receipt of the manager's Step 2 denial. Within ten (10) calendar days after the submission of the written grievance in Step 3, the Union Business Representative(s) or designee shall meet with the Employer's JFK Gateway Director or his designee in a last effort to reach an amicable, fair and final resolution of the grievance. The parties shall make every effort to schedule Step 3 hearings at a reasonable time so that stewards can complete their work day within eight (8) hours. The Employer's JFK Gateway Director or his designee shall submit a written answer to the grievance within five (5) calendar days after the Step 3 meeting.

B. 1. Grievances involving suspension or discharge shall be submitted directly to Step 2. In order to be timely filed, such grievance must be submitted in writing to the applicable manager of the grievant or other management designee within five (5) calendar days after receipt by the employee of written notification of his suspension or discharge.

2. Grievances involving the suspension or discharge of a steward shall be submitted, in writing, directly to Step 3. To be timely filed, such written grievance must be submitted to the Employer's JFK Gateway Director or his designee within five (5) calendar days after receipt by the steward of written notification of his suspension or discharge.

C. If a grievance is not satisfactorily adjusted at Step 3, the Union may submit it to arbitration for binding and final resolution in accordance with the following procedure:

1. The following individuals have been mutually designated by the parties to serve as arbitrators during the life of this Agreement:

Stanley Aiges
Martin Scheinman
Ralph Berger

2. Arbitral designation from the foregoing panel shall be rotated in order of listing in accordance with availability. An arbitrator shall be deemed available if he/she is capable of hearing the instant grievance within thirty (30) calendar days after its presentation. Should none of the foregoing arbitrators be available within such time period, the one who is available closest to the thirty (30) day period shall be selected. Furthermore, in cases involving discharge, the designated arbitrator will endeavor to render his/her decision within thirty (30) calendar days following the conclusion of the hearing.

3. In order to be timely filed, the Union's demand for arbitration shall be submitted to the applicable arbitrator on the list (i.e., the one whose name appears after the one who conducted the last arbitration hearing between the parties) within twenty-one (21) calendar days after receipt of the JFK Gateway Director's Step 3 denial notification. (A copy of the arbitral demand shall be mailed to the JFK Gateway Director at the same time as the demand is forwarded to the arbitrator.)

4. In the event of an alleged violation of Article VII (No Strike/No Lockout), either party, as the case may be, shall be permitted to submit the dispute directly to arbitration. Any of the foregoing arbitrators (regardless of rotation) who are available within twenty-four (24) hours after being contacted (via telephone, fax, telegram or in person, etc.) may be selected. If, however, none are so available and the initiating party does not wish to await a later date, the initiating party may seek appropriate judicial relief in any court of competent jurisdiction.

5. In the event any of the individuals listed in Paragraph C.1 above resign, refuse to act, be incapable of acting, or die, the Employer and the Union shall immediately (not to exceed ten (10) days from the resignation, refusal to act, incapacity or death) designate another person to serve on the arbitration panel.

D. The time periods and limits provided herein shall be deemed to be "of the essence," and may be extended only by the mutual written agreement of the Employer and the Union. Accordingly, the failure of the aggrieved employee(s) or the Union to file a grievance initially, to process a grievance in any of the Steps in the grievance procedure and/or to submit the grievance to arbitration as provided in this Article shall automatically constitute a waiver of the grievance and bar all further action thereon. The failure of the Employer to so respond or meet within the foregoing time limits, however, shall not constitute or be deemed to constitute an acceptance of the grievance or acquiescence thereto. In such cases, the Union may simply proceed to the next step in the Grievance and Arbitration Procedure without time restrictions.

E. All disputes between the parties arising before the execution date of this Agreement or after the termination date thereof, as well as all disputes based on facts, incidents or occurrences taking place prior to the execution date or subsequent to the termination date, are expressly excluded from coverage and are not in any way encompassed by this Article.

F. The steward's attendance at grievance meetings with the Employer's Representative, which are conducted during such steward's regular work hours, shall be deemed time worked and be paid for at his/her regular straight time rate of pay.

G. Nothing herein contained shall require the Employer to file a grievance and utilize the grievance and arbitration procedures to resolve any disputes or disagreements it may have with the Union. In such circumstances, the Employer may act in a manner it deems appropriate, subject to the Union's right to grieve such employer action or conduct. The Employer, in the exercise of its discretion, may seek available legal remedies in a court of competent jurisdiction or applicable governmental, administrative agency.

H. An arbitrator shall interpret this Agreement in connection with the issues properly presented to him for resolution consistent with the terms of the Agreement. An arbitrator's award, not inconsistent with the terms of this Agreement or written supplemental agreement(s) or the issue(s) properly submitted for resolution, shall be final and binding upon the parties hereto and the unit employees. The arbitrator shall be bound by the facts and evidence submitted to him/her in the hearing and may not go beyond the terms of this Agreement in rendering a decision. The arbitrator has no authority or power to add to, delete from, disregard, modify or alter any of the provisions of this Agreement or supplements made a part hereof.

I. 1. If an employee is discharged, suspended or otherwise disciplined for engaging in any of the specific infractions expressly set forth in Categories "A," "B," "C," or "D," above, and a grievance with respect thereto is submitted to arbitration, the arbitrator shall have the authority only to make a factual determination to ascertain if the alleged infraction was or was not proven by a preponderance of the evidence presented at the hearing, and, based thereon, either to sustain or deny the grievance, in full. In such circumstances, the arbitrator has no legal or equitable authority whatsoever to substitute his judgment for that of the Employer and to issue a compromise award or impose a penalty which in any way is different than the penalty expressly provided in the applicable disciplinary category. Accordingly, if a preponderance of the evidence establishes that an employee has engaged in an offense or infraction expressly set forth Categories "A," "B," "C," or "D," "just cause" for the particular disciplinary measures imposed (as expressly set forth in the applicable category) automatically is inferred and deemed to exist, and the arbitrator shall be required to deny the grievance in full. If, however, there is insufficient evidence establishing such violation, the arbitrator shall be required to sustain the grievance in full.

2. If an employee is discharged, suspended or otherwise disciplined for an offense or infraction not expressly set forth in Categories "A," "B," "C," or "D" and a grievance with respect thereto is submitted to arbitration, the arbitrator shall retain his traditional legal and equitable authority and be empowered to sustain or deny the grievance, in whole or in part, and may award or deny reinstatement, with or without back pay, as he deems appropriate and fair.

3. Should the arbitrator sustain a grievance involving the discharge or suspension of an employee under B.1 or 2 above, any and all awards of back pay shall be offset and reduced by any interim earnings and unemployment compensation insurance collected by the grievant. Moreover, all employees who have been discharged shall have an affirmative obligation to seek work to mitigate claims of back wages. An employee's failure to mitigate shall be considered by the arbitrator. In this regard, the arbitrator shall adjust the amount of back pay, if any, and/or deny a back pay remedy altogether in direct proportion to such mitigation efforts. Back pay awards shall not include or be subject to interest charges, compensatory or punitive damages.

J. For grievances submitted to arbitration concerning non-disciplinary issues, the arbitrator – within the limitations set forth in Paragraph A. above – may make such decision or award or disposition as he deems just, fair and equitable and which, in addition to awarding actual monetary damages (excluding compensatory, and/or punitive damages and interest charges) or appropriate equitable relief, may contain provisions commencing, enjoining or restraining acts of conduct.

K. The arbitrator shall render a written decision within thirty (30) calendar days after the hearing is closed or thirty (30) days after briefs are filed and the record in the case is closed, unless the parties thereto mutually agree to a reduction or extension of such time for a decision.

L. The cost of the arbitration, including the fees and expenses of the arbitrator and the cost of the transcript where mutually agreed upon, shall be borne equally by the parties. Each party shall pay any fees, wages or expenses of its own representatives and witnesses for time lost and the cost of the transcript where there is no mutual agreement to order it.

ARTICLE XII. LEAD PERSONNEL

A. Unit employees may serve in a lead capacity, as hereinafter defined, in any of the classifications covered by this Agreement in accordance with the operational needs of the business under the conditions set forth herein.

B. Lead personnel, if any, shall serve at the behest of management in a non-supervisory capacity only; as such, they shall act under and pursuant to supervisory direction and written operational policies, and provide assistance to a supervisor in the routine preparation of reports, training and direction of fellow unit employees in the proper performance of their work duties. Leads may not discipline employees under the provisions of Article X (Discipline) of the Agreement, and may not, under any circumstances, countermand an instruction or direction issued by management/supervision.

C. During the life of this Agreement, there shall be a minimum of six (6) lead positions within the unit; additional lead positions may be established by the Employer, as it deems necessary, and once established they may be eliminated thereafter by the Employer, provided the number of such lead positions do not go below the minimum.

D. The selection of unit employees to fill vacancies within a lead position (either arising from a voluntary downgrade, quit, termination or other permanent cessation of employment within the six (6) minimum positions, or in any newly created lead position above the minimum) shall be based on the Employer's determination as to whom is the most qualified and suitable candidate for the position. If two (2) or more employees are equally qualified, as aforesaid, the most senior qualified employee will be selected.

E. Employees serving in a lead capacity shall receive fifty cents (\$0.50) added to their base hourly rate of pay, as set forth in Article XVII (Wages) for all time worked in a lead capacity and such premium shall be included therein for the calculation of overtime pay, if any, as well as vacations, holidays, sick days, and bereavement. Such premium pay, however, shall be discontinued as and when a lead person leaves or otherwise downgrades from such lead position.

ARTICLE XIII. PERFORMANCE OF BARGAINING UNIT WORK BY NON-UNIT PERSONNEL

A. Unit Work

1. As used herein and elsewhere in this Agreement, the generic term "unit work" refers to the specific work duties, functions and responsibilities regularly and customarily performed on behalf of the Employer by employees within the classifications and Departments covered by this Agreement.

2. In this regard, it is expressly understood and agreed that employees may be directed to, and they shall, perform any unit tasks of any and all covered classifications and Departments for which the Employer deems them qualified.

3. Although as a general rule unit work, as defined herein, shall continue to be performed by employees covered by this Agreement, non-unit personnel (i.e., those not covered by this Agreement) may perform such unit work under the circumstances and conditions set forth herein.

4. Nothing herein contained, however, shall preclude the Employer (due solely and exclusively to customer demands or requests, or for other legitimate operational needs) from rerouting planes, line haul trucks and/or other means of transportation, originating from locations outside the Union's jurisdiction and which regularly and customarily landed or arrived at JFK Airport with shipments that were unloaded, loaded or otherwise processed by unit personnel, to bypass JFK Airport and the Employer's JFK Gateway altogether and proceed directly to any other DHL facility within the DHL global network. (Such rerouting with its resultant diversion of shipments shall not constitute or, in any way, be deemed to constitute a violation of any of the provisions of this Agreement.)

5. Moreover, the training of unit employees in the proper performance of their job functions, duties and responsibilities shall not constitute or, in any way, be deemed to constitute bargaining unit work.

B. Performance Of Bargaining Unit Work By Supervisors/Management Representatives and/or Non-Unit Administrative Personnel.

1. Supervisors/management representatives and/or non-unit administrative support personnel may continue to perform unit work of the same nature, and to the same extent and degree under same or similar circumstances, as they regularly and customarily did prior to the execution of this Agreement, or as operational conditions require.

2. In addition, and without limiting or restricting any of the rights set forth in B.1. above, supervisors/management representatives and/or non-unit administrative personnel may also perform unit work, as operational conditions require, in the following circumstances:

- (i) in emergency situations;
- (ii) where available personnel are not capable of performing the required work;
- (iii) where an urgent situation arises and qualified personnel are not readily available to do the required work;
- (iv) training of employees in the proper performance of their work duties;
- (v) protection of the property of the Employer;
- (vi) to ensure the safety of employees;
- (vii) to meet and/or fulfill service commitments in a timely fashion;
- (viii) to fulfill all requirements of customs and/or other governmental agencies, as required by government regulations, in a timely fashion; and/or
- (ix) customer escalation.

(Verbal notification of the performance of unit work, as aforesaid, shall be provided to the Steward).

C. Performance Of Unit Work By Employees Within The DHL/295 (formerly 851) Contractual Unit At Building 263

Following the exhaustion of available work and/or overtime opportunities within the unit, the Employer, in accordance with the operational needs of the business, may continue to use Control Center Service Agents within the DHL/295 (formerly 851) unit at Building 263 to assist in the performance of research and tracing. Local 295 (formerly 851) unit work, to assist and/or otherwise

perform, as needed, telephone answering and distribution functions within the Clearance Clerk classification, and to assist in the performance of export data entry functions within the Clearance Agent classification to the same extent and degree under the same or similar circumstances as they did prior to the execution of this Agreement.

D. Performance of Unit Work By DHL Employees Employed at DHL Facilities Outside of Building 263

In accordance with the operational needs of the business, DHL employees employed at DHL facilities outside of Building 263 may continue to perform unit work to the same extent and degree as they did prior to the execution of this Agreement in connection with emergency situations, unforeseen spikes in volume and serious network and/or system problems, as follows:

1. DHL Customer Service employees employed at DHL facilities outside of Building 263 may continue to assist and/or complete customer contact (i.e., contact customers, obtain information/documentation required for data entry process and submit upon receipt to the Clearance Agents), as needed;

2. DHL Import employees employed at DHL facilities outside of Building 263 may continue to assist with the entry preparation and processing through Customs Border Protection and other governmental agencies, as needed; and

3. DHL Export employees employed at DHL facilities outside of Building 263 may continue to assist Clearance Agents at Building 263 with HAWB data entry, SED data entry and other export related functions, as needed.

E. Transfer of Work

1. In the event the Employer opens a new facility outside the jurisdiction of this Agreement or should the Employer transfer work presently performed or hereafter assigned to the bargaining unit, to another or new operation of the Employer, which transfer would result in layoffs of employees covered by this Agreement, the Employer will, at least thirty (30) days prior to any such transfer, notify the Union and offer employees the opportunities (for any available jobs at the new location) by seniority, senior employees first, to transfer to the new operation that results from the transfer of work.

2. The Company may not, as a result of such work transfer, reduce the unit by more than 14 bidded positions prior to December 31, 2010, nor may it, as a result of such work transfer, reduce the unit by more than another 15 bidded positions, or a total of 29, during the remainder of the term of this collective bargaining agreement. Further, all reductions in the unit resulting from such work transfers shall be done on the basis of Company seniority. The Company is under no obligation to replace employees who leave through regular attrition, but attrition numbers will count against any work transfer reductions.

3. If an Employee accepts a transfer, he will retain his seniority for the purpose of fringe benefits and vacation pay only, provided that this shall not be construed to require the violation of any contractual obligation (in the event there is a labor agreement in place at the new operation) at the transferred location. An employee shall retain his seniority standing at the original terminal for a period of three (3) years in the event the new operation changes locations or terminates and reverts back to the original operation.

4. If the employee declines to accept a job opportunity at the new operation he shall receive termination pay pursuant to the following schedule:

- (i) two (2) weeks' pay (eighty (80) hours at their current base rate of pay for full-time employees, and twice the amount contractually required for a week's vacation for part-time employees) for each completed year of service, up to a maximum of fifteen (15) weeks of salary continuation in exchange for a general employment release agreement on a form to be provided.

5. By agreeing to this Transfer of Work provision, the Union clearly and unambiguously waives its right to bargain over the decision and effects of the Employer's future possible transfer of work.

F. Performance of Unit Work By Subcontractors

The Employer may continue to engage subcontractors to perform bargaining unit export clearance work only in the following circumstances:

1. in emergency situations;
2. unforeseen spikes in volume;
3. serious network and/or system problems.

In each of the foregoing circumstances, the subcontracting may not continue in excess of sixty (60) calendar days, without the Union's consent.

All of the foregoing rights to subcontract are granted on the express understanding that such subcontracting may not result in the reduction of the regular work day of currently employed unit employees who, but for the subcontracting, would have performed the work in question.

ARTICLE XIV. SENIORITY, LAYOFF AND RECALL

A. Seniority Definitions

The generic term "seniority," as used in this Article and elsewhere in this Agreement, has the same meaning and application as the term "length of service." Seniority shall be calculated on an Employer and unit basis, as follows:

1. Employer Seniority— shall be calculated from the date of the employee's first employment with the Employer, its predecessor, affiliates, subsidiaries or acquired companies, anywhere within or without the country, or re-employment by DHL following a loss of seniority, pursuant to the terms of Paragraph E., infra. Any time spent in a "temporary on-call" and/or "casual" capacity shall not be calculated or be included in determining an employee's Employer Seniority.

2. Unit Seniority— shall be calculated from the date on which the employee first commenced working for the Employer at Building 263 in the collective bargaining unit covered by this Agreement, or re-employment following a loss of seniority, pursuant to the terms of Paragraph E., infra. Any and all unit employees employed at Building 263 as of the ratification date of this Agreement shall be credited with all time employed (excluding time, if any, in a "temporary on-call," casual and/or supervisory capacity) in a comparable unit position at any DHL facility.

B. Seniority Principle

1. Unit Seniority shall be utilized in determining:
 - (i) the filling of General and/or Supplemental Bids, as provided in Article XV (Work Week, Bidding, Meal & Break Periods), and, insofar as may reasonably be practicable, in the filling of permanent vacancies arising after or between General and Supplemental Bids, as provided in Article XV (Work Week, Bidding, Meal & Break Periods);

- (ii) the order of layoffs and recall from layoff within a particular unit classification of the contractual Department in which the overstaffing exists, as provided in F.2 infra; and in the selection of vacation weeks, as provided in Article XX (Vacations); and
- (iii) In the event unit seniority among two (2) or more qualified employees is equal, Employer Seniority shall prevail.

2. Employer Seniority shall be utilized in determining entitlement to vacations and other fringe benefits herein provided where length of service is a factor. In the event Employer Seniority among two (2) or more employees is equal, priority on the seniority roster shall be determined by employment application date. If the dates are identical, the tie breaker shall be a coin toss administered by the Employer in the presence of the Steward or other Union representative.

3. Limitations on Seniority Usage – Seniority does not give an employee the right to choose or demand a specific job assignment and, under no circumstances (except for bumping under the provisions of Paragraph H, infra) may it be used to replace or to substitute a less senior employee on a bidded shift on which the less senior employee has been awarded, and on which he is currently working.

C. Within thirty (30) calendar days after the signing of this Agreement, the Employer shall post a list of employees arranged according to Unit Seniority in a conspicuous place at its Building 263 facility. An updated list shall be posted by the Employer quarterly thereafter. Claims for corrections to such list(s) must be made to the Employer's Senior Operations Manager within ten (10) calendar days after the posting thereof; if, however, no such claim for corrections is timely made, the list(s) shall be deemed correct. Any controversy over the seniority standing of any employee on such list(s), if raised within the aforesaid ten (10) calendar day period, shall be submitted to the grievance and arbitration procedures in this Agreement.

D. Employee Address and Phone Number

Each unit member is responsible for keeping the Employer informed of his current address and telephone number. Further, employees must notify the Employer within one (1) week, in writing, of any change of address or telephone number.

E. Loss of Seniority – Termination of Employment

An employee shall lose all accumulated seniority for any of the following reasons:

1. Voluntary resignation;
2. Termination for just cause;
3. Layoff for twelve (12) or more consecutive months, or for the length of the employee's continuous service with the Employer in the unit covered by this Agreement, whichever is less;
4. Unauthorized failure to report for work, as scheduled, for three (3) consecutive days;
5. Acceptance of a non-unit position with the Employer;
6. Failure to report to work, as scheduled, at the expiration of a contractual leave of absence, without Employer permission.
7.
 - (i) Failure to respond to a notice of recall; and/or
 - (ii) Failure to report to work, as scheduled, after positively responding to a notice of recall from layoff.
8. Failure, refusal and/or inability to return to work fully capable of performing the essential functions of the job within eighteen (18) months following the employee's absence from work as a result of a work related medically substantiated disability or injury, unless a longer period is required by the ADA or applicable federal, state, or local law.

9. Failure, refusal and/or inability to return to work fully capable of performing the essential functions of the job within one (1) year following the employee's absence from work as the result of a non-work related medically substantiated disability or injury or a period equal to the employee's length of service with the Company, whichever is less, unless a longer period is required by the ADA or applicable federal, state, or local law.

F. Layoffs

Layoffs shall be effectuated from the applicable unit classification as follows:

1. Probationary employees within the affected unit classifications shall be laid off first without regard to their individual periods of employment.
2. If further layoffs are required within the affected unit classification, Employer will lay off employees in reverse Unit Seniority order.

G. Notification of Layoff

In the absence of exigent circumstances, the Employer shall provide advance notification of layoff to affected employees (excluding probationary employees). A copy of such notice shall be provided to the steward and sent via mail and fax to the Union Hall.

H. Bumping

1. An employee scheduled to be laid off under the provisions of F.2. above, may "bump" a unit employee within any other classification, subject to the following:

- (i) A full-time employee may bump (at the full-time employee's option) either full-time or part-time employees with the least Unit Seniority in any other classification which he is eligible to bump into so long as he:
 - a. possesses greater Unit Seniority than the employee he desires to bump;
 - b. satisfactorily meets the minimum qualifications (as set forth in the Job Descriptions) of the classification of the employee he desires to bump; and
 - c. assumes the same work week and work day shift schedule of the employee he desires to bump.
- (ii) A part-time employee may bump the least senior employee (regardless of full-time or part-time status) in any other classification which he is eligible to bump into so long as he:
 - a. possesses greater unit seniority than the employee he desires to bump;
 - b. satisfactorily meets the minimum qualifications (as set forth in the Job Descriptions) of the classification of the employee he desires to bump; and

c. assumes the same work week and work day shift schedule of the employee he desires to bump.

2. An employee desiring to exercise a bump must advise the Employer of his decision within three (3) calendar days after receipt of written notification of layoff. Failure to notify the Employer within such time period shall result in the forfeiture of bumping privileges.

3. Bumping privileges shall not be extended to probationary employees.

4. An employee exercising a bump in lieu of layoff shall be given priority in returning to a subsequent vacancy in the same job classification previously held by the employee, provided such vacancy occurs within one (1) year after the exercise of the bump.

I. Recall

1. Unit employees on layoff shall be recalled to fill available vacancies for which they are qualified in reverse order of layoff. In the event of a recall, laid off employees who are recalled shall be notified by certified mail with a copy to the Union. If the laid off employee fails to comply with the orders contained in the recall notice, he shall lose all seniority rights under the Agreement and shall be considered a voluntary quit.

2. Unit employees (excluding probationary employees) shall enjoy recall rights for a period not to exceed twelve (12) consecutive months following the effective date of the layoff, or the length of the employee's continuous service with the Employer, whichever is less.

3. Probationary employees have no rights to recall under this provision or Agreement.

J. Inter-Bargaining

In accordance with the parties' Agreement, as confirmed and adopted by and between the Employer and Local 295, IBT field and Gateway units, and the Local 295 (formerly 851), IBT,

clerical unit inter-bargaining unit transfers between the Employer/Local 295 (formerly 851) clerical unit or the Employer/Local 295 field and Gateway units shall effectuated as follows:

1. Whenever a position becomes available in the work force, it will be offered to eligible employees, regardless of their current unit affiliation, before hiring from the outside.

2. To be eligible for inter-bargaining unit transfer, an employee must:

- (i) File a written request for bargaining unit transfer with his supervisor, specifying the unit and geographic area for which such transfer is sought. That request shall be effective for twelve (12) months, and must be renewed thereafter;
- (ii) Demonstrate the qualifications necessary to fill that position, as required by the Company (e.g., passing a customer service exam, international exam, typing proficiency, licenses, etc.), as the case may be; and
- (iii) Have not previously transferred from one bargaining unit to another during the life of the current contract.

3. When two (2) or more employees are equally qualified, as determined by the Employer in its sole exercise of discretion, the position shall be offered to the qualified employee with the most Company Seniority.

4. When an employee voluntarily transfers to another bargaining unit, he shall be governed by the terms and conditions of the contract covering that bargaining unit only. That employee shall receive the wage rate and benefit entitlements set forth herein, based on his date of hire. All seniority rights, including but not limited to layoff, recall, bidding, etc. shall be based on his date of transfer into the new bargaining unit. Any disciplinary step accrued in the old unit shall automatically transfer into the new one.

5. Provided, however, if within thirty (30) calendar days following the effective date of the transfer, the employee does not satisfy the probationary period requirements of the new bargaining unit position or otherwise simply wishes to return to his former unit, the employee may return to such former unit within the aforesaid thirty (30) calendar day period based on the principle of Company seniority and even though this may result in the layoff of a junior employee in the unit to which he timely returned.

ARTICLE XV. JOB BIDDING PROCESS

A. General Bid and Bidding Procedures.

1. Within 60 calendar days after the ratification date of this Agreement, the Employer shall determine the number and type of regular full-time and/or part-time work week and regular work day shifts, their starting and ending times, and the number of employees, by classification, required to staff each such regular full-time or part-time work week, and work day shift for each classification covered by this Agreement, and shall post the vacancies for bid.

2. A General Bid shall be conducted at least once each contract year thereafter in the month of January. A second General Bid may be posted for one or more contractual Departments, at the Employer's discretion, in October to cover the remainder of the calendar year (November-December 31st). If the Employer posts such a second General Bid, it will also at such time post the General Bid (for all contractual Departments) applicable to the subsequent calendar year, the implementation of which shall occur within the month of January upon three (3) weeks advance written notification.

3. The opportunity to fill an available position within a unit classification of a contractually covered Department shall be offered to qualified employees in such applicable classification and Department, in accordance with unit seniority.

4. The General Bid shall be completed as of 12 midnight on the fourteenth (14th) calendar day following the day on which the General Bid was posted within the Employer's facility. Except as otherwise provided in Paragraph C. 6. below, the General Bid shall be implemented on the 1st Monday which falls immediately after the expiration of an additional fourteen (14) calendar day period, commencing the day following the completion of the General Bid. The Employer shall use this additional 14 day period to train employees, as needed, prior to the implementation of the Bid. Example: General Bid posted on January 6, 2010; Bid completed as of 12 midnight January 20, 2010; Bid is implemented on the 1st Monday thereafter - February 8, 2010.

5. Employees failing or refusing to submit their bid prior to the conclusion of the posting period shall be assigned to available un-bid work weeks and shifts as the Employer deems appropriate without regard to seniority.

6. In connection solely and exclusively with the 1st General Bid occurring after the ratification of this Agreement, if such General Bid, upon completion, reveals a major migration of employees leaving from their previously scheduled shift to another shift(s), and the resultant vacancies in the shift from which they left (at least –30% of the shift positions) are not bidden, thereby necessitating the Employer to hire additional personnel for same from outside sources, the General Bid will not be implemented until the 1st Sunday which falls immediately after the expiration of an additional sixty (60) calendar day period after the completion of the General Bid.

7. Full-time employees may only bid for posted full-time positions and part-time employees may only bid for posted part-time positions in accordance with their unit seniority. However, where there are extra bids in full-time or part-time categories, any qualified unit employee (regardless of full-time or part-time status) may bid for any vacant bidden full-time for part-time shift.

B. Supplemental Bids

1. The General Bid may be changed and posted for re-bid upon at least ten (10) calendar days advance notification to the Union, as the Employer deems warranted, in response to significant business, operational needs and/or requirements in accordance with the bidding procedures set forth above in sections A. 1, 3, 5 and 7 of this Article.

2. In the event of the dire emergency, act of God or other legitimate crisis in connection with a significant business, operational need, a Supplemental Bid may occur on less than ten (10) days notice.

3. For the purposes of this Article, a “significant business operational need or requirement” shall be defined to include the following: Customs clearance changes; flight schedule changes; commercial airline changes; linehaul network changes; additions or deletions of JFK flights; TSA (and/or any other Government agencies) changes impacting Employer operations, and jet stream changes affecting airline departures/arrivals, etc.

4. Routine engineering evaluations and/or re-evaluations shall not constitute or be deemed to constitute a “significant business operational need or requirement” hereunder.

5. The Supplemental Bid shall be completed as of midnight on the tenth (10th) calendar day, (or earlier, as provided in D.2 above), following the day on which the Supplemental Bid was posted within the Employer’s facility. The Supplemental Bid shall be implemented on the 1st Monday which falls immediately after the expiration of an additional ten (10) calendar day period, commencing the day following the completion of the Supplemental Bids.

C. Filling of Work Week/Work Day (i.e., Shift) Permanent Vacancies Between Bids.

1. Insofar as may reasonably be practicable, operationally effective and efficient without creating an inequitable distribution of skilled personnel within a unit classification, the opportunity to fill available permanent vacant positions within a work week/work day shift of such unit classification arising after or between General and Supplemental bids shall be offered (without further bidding) initially to employees on all shifts within the same unit classification for which the vacancy exists in accordance with Unit Seniority.

2. Should an insufficient number of employees within the applicable classification volunteer for the vacancy, the openings shall be offered to unit employees within all other remaining contractual departments who have the requisite qualifications for the vacant position in accordance with Unit Seniority.

3. If, however, vacancies still exist due to lack of qualified volunteers, qualified unit employees within the same classification of the department in which the vacancy exists, may be assigned thereto in inverse order of Unit Seniority, or, the Employer, as it deems appropriate, may simply hire employees from the outside to fill the vacancy.

D. Slide Time Changes In Starting Times.

Starting times for full-time and/or part-time positions may be changed by the Employer up to one (1) hour per day, based on operational need (i.e., plane delays for one (1) or more hours). The Employer shall endeavor to contact the employee by telephone (at the number of record in the employee's personnel file) at least one (1) hour prior to his scheduled start time. If the employee, through no fault of his own, does not receive such timely notification from the Employer, yet he nonetheless reports to work, the aforementioned one (1) hour slide shall be reduced to thirty (30) minutes. But, if the employee is at fault for his failure to receive the requisite advance notification (i.e., no telephone number or incorrect number listed in employee's personnel file resulting from the employee's failure to provide and/or update as required in Article XIV), the one (1) hour slide shall not be reduced.

ARTICLE XVI. PART-TIME EMPLOYEES

A. A regular part-time unit employee is an individual who is regularly scheduled to work a minimum of at least sixteen (16) up to a maximum of thirty-two (32) hours per week, not to exceed five (5) calendar days within the payroll period. (The Employer may not hire or employ an individual in the unit on a temporary or casual basis, or in a part-time capacity working less than sixteen (16) hours per week.)

B. The Employer may continue to employ part-time personnel, as defined above, to fulfill its operational needs, subject to the terms and conditions set forth in this Article.

C. The regular work week for part-time employees shall be guaranteed to consist of at least a minimum of sixteen (16) hours (and may not exceed thirty-two (32) hours of work) within the Employer's payroll period (i.e., Monday to Sunday). The regular work day for such part-time employees shall be guaranteed to consist of at least a minimum of four (4) consecutive hours.

D. In accordance with the operational needs of the Employer, the regular work day schedule for part-time employees may consist of four (4), five (5), six (6), seven (7), or eight (8) consecutive hours per day for each scheduled workday, Monday to Sunday, provided the regular work week schedules of such personnel remain at thirty two (32) hours per week or less.

E. Except as otherwise necessitated for reasons of operational efficiency and flexibility, the Employer shall endeavor in good faith to establish regular part-time work schedules, consisting of consecutive work days and consecutive days off.

F. The bidded regular part-time work day schedules within an employee's bidded regular part-time work week may have different start times, not to exceed a two (2) hour swing time each day (either up or down), based on the employee's start time on the 1st work day in the payroll period.

Example: Part-time employee is scheduled to work Monday-Friday, four (4) hours per day; start time on Monday is 8:00 A.M.; start times for the remainder of the week may be:

<u>Tuesday</u>	<u>Wednesday</u>	<u>Thursday</u>	<u>Friday</u>
10:00 A.M.	8:00 A.M.	6:00 A.M.	8:00 A.M.

(A four (4) hour swing from 10:00 A.M. to 6:00 A.M. and/or from 6:00 A.M. to 10:00 A.M. under the foregoing example is not permitted).

G. All regular part-time employee whose regular work week schedule consists of thirty-two (32) hours per week shall be eligible to participate in the Union's Health and Welfare Plan and the Union's Pension Plan, and the Employer shall remit contributions thereto on his behalf pursuant to the terms of the Fund's Trust Agreement.

H. At all times during the life of this Agreement, the Employer may hire and retain in its employment within the unit as many part-time employees as it deems appropriate to fulfill its operational needs, provided that it employs (active and/or inactive) a minimum of thirty nine (39) full-time employees (i.e., regularly scheduled to work 40 hours per week) in the 295 (formerly 851) Gateway clerical unit on the Company's payroll. So long as there are no fewer than 39 full-time employees in the 295 (formerly 851) Gateway clerical Unit on the Company's payroll, the Company may utilize part-time employees pursuant to the terms and conditions of this Agreement. In addition, the Company may solicit current employees who desire to work as part-timers. Should those individuals elect a downgrade to part-time status, they will be red circled and will keep their full-time wage, Health & Welfare, and Pension contribution rates. Use of part-time employees shall not deprive full-time employees of prime shifts.

If, however, a significant downturn in business develops in the future which, in fact, results not only in the layoff of one (1) or more full-time unit employees, but also in the reduction of full-time unit personnel to a level below the foregoing minimum full-time guarantee, said guarantee shall automatically be modified, downward, to reflect such layoffs and become the new "temporary" guarantee number. As and when business is restored and the laid off full-time employees are recalled, the "temporary" guarantee shall be increased by one (1) for each said recall up to but not in excess of the thirty nine (39) full-time guarantee.

ARTICLE XVII. WAGES, SHIFT DIFFERENTIAL, OVERTIME

A. Wages for Employees Hired Prior to 12/1/09

1. Scale "A" – Employees who, prior to the current Agreement, Were In the Import Clerk, Finance Clerk, and Supply Clerk Job Progressions.

WAGE STEPS	WAGE RATES
0	\$10.00
1	\$10.55
2	\$11.10
3	\$11.65
4	\$12.20
5	\$12.75
6	\$13.20
7	\$13.85
8	\$14.40
9	\$14.95
10	\$15.50
11	\$16.05
12	\$16.60
13	\$17.15
14	\$17.71
15	\$18.27
16	\$18.83
17	\$19.39
18	\$19.95
19	\$20.51
20	\$21.07
21 Top of Scale	\$22.07
Effective 3/1/11 Top of Scale	\$22.42
Effective 3/1/12 Top of Scale	\$22.82
Effective 3/1/13 Top of Scale	\$23.27

Following the date of hire, wage increases from one (1) step to the next higher step shall be provided at six (6) month intervals.

2. Scale "B" - Employees who, prior to the current Agreement, Were In the Export Service Agent, CSR, and Import Courier Agent Progressions.

WAGE STEPS	WAGE RATES
0	\$11.00
1	\$11.29
2	\$11.83
3	\$12.37
4	\$12.91

5	\$13.45
6	\$13.99
7	\$14.53
8	\$15.07
9	\$15.61
10	\$16.15
11	\$16.69
12	\$17.24
13	\$17.79
14	\$18.34
15	\$18.89
16	\$19.44
17	\$19.99
18	\$20.54
19	\$21.09
20	\$21.64
21 Top of Scale	\$22.64
Effective 3/1/11 Top of Scale	\$22.99
Effective 3/1/12 Top of Scale	\$23.39
Effective 3/1/13 Top of Scale	\$23.84

Following the date of hire, wage increases from one (1) step to the next higher step shall be provided at six (6) month intervals.

3. Scale "C" - Employees who, prior to the current Agreement, Were In the Import Service Agent Progression.

WAGE STEPS	WAGE RATES
0	\$13.00
1	\$13.21
2	\$13.67
3	\$14.13
4	\$14.59
5	\$15.05
6	\$15.51
7	\$15.97
8	\$16.43
9	\$16.90
10	\$17.37
11	\$17.84
12	\$18.31
13	\$18.78
14	\$19.25

15	\$19.72
16	\$20.19
17	\$20.66
18	\$21.13
19	\$21.60
20	\$22.07
21 Top of Scale	\$23.07
Effective 3/1/11 Top of Scale	\$23.42
Effective 3/1/12 Top of Scale	\$23.82
Effective 3/1/13 Top of Scale	\$24.27

Following the date of hire, wage increases from one (1) step to the next higher step shall be provided at six (6) month intervals.

4. Scale "D" - Employees who, prior to the current Agreement, Were In the Senior Import Service Agent Progression.

WAGE STEPS	WAGE RATES
0	\$14.00
1	\$14.25
2	\$14.75
3	\$15.25
4	\$15.75
5	\$16.25
6	\$16.76
7	\$17.27
8	\$17.78
9	\$18.29
10	\$18.80
11	\$19.31
12	\$19.82
13	\$20.33
14	\$20.84
15	\$21.35
16	\$21.86
17	\$22.37
18	\$22.88
19	\$23.39
20	\$23.90
Top of Scale	\$24.90
Effective 3/1/11 Top of Scale	\$25.25
Effective 3/1/12 Top of Scale	\$25.65
Effective 3/1/13 Top of Scale	\$26.10

--	--

Following the date of hire, wage increases from one (1) step to the next higher step shall be provided at six (6) month intervals.

B. Wages for Employees Hired After 12/1/09

1. Wage Schedule For Regular Full-Time And Regular Part-Time Clearance Clerks.

WAGE STEPS	WAGE RATES
0	\$10.00
1	\$10.55
2	\$11.10
3	\$11.65
4	\$12.20
5	\$12.75
6	\$13.20
7	\$13.85
8	\$14.40
9	\$14.95
10	\$15.50
11	\$16.05
12	\$16.60
13	\$17.15
14	\$17.71
15	\$18.27
16	\$18.83
17	\$19.39
18	\$19.95
19	\$20.51
20 – Top of Scale	\$21.07

Following the date of hire, wage increases from one (1) step to the next higher step shall be provided at six (6) month intervals.

2. Wage Schedule For Regular Full-Time And Regular Part-Time Clearance Agents.

WAGE STEPS	WAGE RATES
0	\$11.00
1	\$11.29

2	\$11.83
3	\$12.37
4	\$12.91
5	\$13.45
6	\$13.99
7	\$14.53
8	\$15.07
9	\$15.61
10	\$16.15
11	\$16.69
12	\$17.24
13	\$17.79
14	\$18.34
15	\$18.89
16	\$19.44
17	\$19.99
18	\$20.54
19	\$21.09
20 -- Top of Scale	\$21.64

Following the date of hire, wage increases from one (1) step to the next higher step shall be provided at six (6) month intervals.

3. Wage Schedule For All Full-Time And Regular Part-Time Sr. Clearance Agents.

WAGE STEPS	WAGE RATES
0	\$14.00
1	\$14.25
2	\$14.75
3	\$15.25
4	\$15.75
5	\$16.25
6	\$16.76
7	\$17.27
8	\$17.78
9	\$18.29
10	\$18.80
11	\$19.31
12	\$19.82
13	\$20.33
14	\$20.84
15	\$21.35

16	\$21.86
17	\$22.37
18	\$22.88
19	\$23.39
20 – Top of Scale	\$23.90

Following the date of hire, wage increases from one (1) step to the next higher step shall be provided at six (6) month intervals.

C. Advanced Placement On Applicable Wage Progression Scale For Experienced Clearance Agents And/Or Sr. Clearance Agents, Hired From Outside Sources.

All newly hired unit personnel from outside sources (excluding those entering the unit via the inter-bargaining unit transfer provisions set forth in Article XIV (Seniority), shall be paid at Step 0 of the wage progression applicable to their respective classification, except the Employer may, in the exercise of its discretion, place newly hired personnel in the Clearance Agent and/or Sr. Clearance Agent classifications at Step 6 of their respective wage progression scales, provided such individuals satisfy the following criteria:

1. Have three (3) years experience in the brokerage industry performing duties similar or comparable to those set forth in the applicable job description;
2. Meet the minimum qualifications set forth, as applicable, in the job descriptions annexed hereto as Appendix A; and
3.
 - (i) Take and satisfactorily pass a written and practical test, prepared and administered by the Employer, with a score of 95% or higher, demonstrating the ability to process and prepare accurately ABI informals, ABI formals, inbond entries and broker turnover documentation; and
 - (ii) For Sr. Clearance Agents only, take and satisfactorily pass an additional written and practical test, prepared and administered by the Employer, with a score of 95% or higher, demonstrating the ability to process and prepare accurately ABI FDA entries, ABI FWS entries, TIB entries, Government contract entries, Manipulation entries, and Post Entry processing (i.e., 28s, 29s, SILs etc.)

D. Shift Differential

1. Shift differential payments for full-time and/or part-time unit employees whose regular work day schedule falls within the time period from 6:00 p.m. to 12:00 a.m. or from 12 a.m. to 8:00 a.m. shall be provided under the terms and conditions set forth herein.
2.
 - (i) In the event fifty-one percent (51%) or more of an employee's regularly scheduled work hours falls within either of the applicable evening time periods, shift differential shall be paid for all hours worked on such shifts.

- (ii) If, however, only fifty percent (50%) of an employee's regularly scheduled work hours falls within either of the applicable evening or night time periods, shift differential shall be paid only for regularly scheduled hours actually worked after the commencement of the evening or night time periods.
- (iii) If less than fifty percent (50%) of an employee's regularly scheduled work hours falls within either of the applicable evening or night time periods, no differential payments whatsoever shall be provided for any and all hours worked.

3. The evening shift differential is forty cents (\$0.40) per hour, and the night shift differential is fifty cents (\$0.50) per hour.

- (i) Shift differential payments shall be added to an employee's base hourly rate for the computation of overtime payments, if any, arising within the payroll week.
- (ii) Except as otherwise required by federal or state law, the foregoing shift differential payments shall not be added to an employee's base wage scale for the purpose of computing the other fringe benefits provided in this Agreement (i.e., sick leave, bereavement leave, jury duty, holidays and/or vacations).

E. Overtime

1. Full-time employees (i.e., regularly scheduled to work 40 hours per payroll week, 8 hours per day) shall be paid at the rate of time and one-half (1 ½) their regular straight-time hourly rate of pay for all hours actually worked in excess of eight (8) hours in any one (1) day, or in excess of forty (40) hours per payroll week (i.e., Monday to Sunday).

2. Part-time employees (i.e., regularly scheduled to work at least 16 up to 32 hours per payroll week) shall be paid at the rate of time and one-half (1 ½) their regular straight-time hourly rate of pay only for all hours actually worked in excess of forty (40) hours per payroll week.

3. Except as otherwise provided herein, all hours not actually worked during the payroll week (whether paid or unpaid) shall not be counted or in any way be considered in determining overtime entitlement. However, designated contractual holidays (including floating holidays), paid sick leave and paid vacation hours only shall be deemed time worked for the purpose of computing overtime entitlement.

4. There shall be no pyramiding of overtime. In addition, all overtime shall be paid for, and no employee will take time off as payment there for.

5. As and when requested by the Employer, an employee may be required to perform a reasonable amount of overtime as operational conditions dictate. It is understood and agreed, however, that employees shall not be forced to work more than ten (10) hours on any shift on a recurring basis, except in case of unforeseen operational emergencies.

6. In the event work needs to be performed following the end of a scheduled shift, such potential overtime opportunities shall be offered to employees in the applicable classification on such shift, by unit seniority. Should there be an insufficient number of volunteers, employees within the applicable classification on such shift may be assigned to perform the overtime work in inverse order of unit seniority.

7. All overtime must be approved in advance by the employee's supervisor and must be recorded on the employee's time sheet.

ARTICLE XVIII. HEALTH AND WELFARE

The Employer agrees that the Trust Agreement establishing the Local 295/Local 851 Employer Group Welfare Fund shall be incorporated in this Agreement as though it is fully set forth herein, and the terms thereof shall be deemed binding upon it as a signatory to the Agreement of Trust made and establishing the Local 295/Local 851 IBT Employer Group Welfare Fund. It is further agreed that the Union may be considered an Employer for the purpose of making contributions to the Local 295/Local 851 IBT Employer Group Welfare Fund on behalf of employees and officers of the Union.

A. Local 295/851 IBT Employer Group Welfare Fund

1. All full-time and part-time employees, if any, that are regularly scheduled to work thirty-two (32) hours per week, shall be eligible to participate in the Welfare Fund, provided there are at least eight (8) weeks in the calendar quarter in which they maintained or assumed their full-time, or regularly scheduled thirty-two (32) hour part-time status.
2. Until a full-time or part-time employee is eligible for participation in the Welfare Fund, the Employer shall continue to provide him with medical insurance under the Company medical plan, as provided in the section below.
3. Contribution Rates

For active employees covered by this section 1, the Employer's contribution rate shall be \$264.60 per week effective as 3/1/2009 and \$279.24 effective as of 3/1/2010.

4. Preferred Rehabilitation Plan.

Pursuant to the Preferred Schedule of the Rehabilitation Plan for the 295/851 Pension and Health & Welfare Funds, the Company agrees to increase cumulative full-time contributions by \$1 per hour per year, effective 3/1/10, 3/1/11, 3/1/12, and 3/1/13, to be divided among Pension and Health & Welfare, as reasonably determined by the parties in the best interests of the various funds, and as approved of by the Trustees of the Pension and/or Health & Welfare Plan. The \$1 per hour per year must first be exhausted on Pension or Health & Welfare contribution increases necessary to maintain benefits. If the \$1 per hour per year increase is not exhausted by maintaining Pension and Health & Welfare benefits at their then current levels, the remaining funds may be used to increase benefit levels, if permitted by law. A pro-rata contribution in the same proportion to the increases resulting for full-time contribution rates will be made on behalf of part-time employees.

B. All Other Employees.

1. Employees not covered by the Welfare Fund hired prior to December 1, 2009 shall continue to be covered by and participate in the DHL Benefits Program pursuant to which they shall be provided with the following core coverages: Medical, Vision, Dental, Prescription Drug, Life Insurance (Employee only at the rate of 1 time annual salary), Accidental Death and Dismemberment Insurance (Employee only at the rate of 1 time annual salary), Short Term Disability (Employee only), Long Term Disability (Employee only).
2. In addition, all such unit employees shall have the option to enroll in Flexible Spending Accounts (Health Care and Dependent Care) and select supplemental coverage for Life Insurance, Accidental Death and Dismemberment as well as Long Term Disability, as specified in the DHL Benefits Program.
3. Except as otherwise provided herein, all of the foregoing benefits shall be provided pursuant to and in accordance with the express terms, conditions and provisions of the DHL Benefits Program. The premium costs for all core coverages under the DHL Benefits Program selected by all unit personnel covered thereunder as set forth in B.1 above, shall be borne, in their entirety, by the Employer. The cost, however, for any and all benefits set forth in B.2 above, shall be borne solely by the employees.

4. Employees not covered by the Welfare Fund hired after December 1, 2009 and their dependents shall be covered by the Employer's then current standard (i.e., not premium) medical, dental, and eye care/optical plan in effect for the Company's non-union workforce. Such plan is subject to discretionary change by the Employer during the term of the agreement to the extent the Company is making a general change for its non-unionized workforce. A summary of benefits shall be provided to each employee upon his successful completion of his probationary period. Employees not covered by the Welfare Fund who wish to upgrade from the standard plan to a premium level of coverage may do so at their own expense.

C. Contributions shall be made to the Welfare Fund on or before the tenth (10th) day of the succeeding month on account of contributions due for the immediately preceding month.

D. In the event there are any revisions to the eligibility requirements for participation in the Local 295/851 Welfare Fund, the parties shall meet and discuss such changes.

E. The Employer assumes full responsibility for coverage for all employees. In the event of any loss sustained by the employee or his family resulting from the negligence or failure of the Employer to make regular and timely contributions to the Fund, the Employer shall personally be liable for any such loss. The Employer further agrees to provide statutory disability benefits for the employees covered by this Agreement at no cost to the employees covered by this Agreement.

F. Payments to the Welfare Fund shall not be continued during a strike.

G. The parties hereby confirm and approve the composition and membership of the Board of Trustees of the Health & Welfare Fund as now and hereafter constituted.

H. A duly authorized agent or representative of the Employer is to acknowledge the accuracy and to verify the contributions by affixing his signature in the space designated on the contribution form submitted by the Fund.

ARTICLE XIX. PENSION

A. All unit employees (full-time and part-time) shall be eligible to participate in the Local 295/Local 851-IBT Employer Group Pension Trust Fund (hereafter called "Pension Fund") in accordance with the provisions set forth in the Trust Agreement. Any and all benefits accrued under the DHL Retirement Pension Plan and/or the DHL 401(k) Plan as of February 13, 2005, and/or the repayment of loan obligations shall be determined in accordance with the express terms and conditions of such DHL plans as the same currently exist, or as same subsequently may be altered or modified on a uniform basis for all participants within the DHL network.

B. The Employer agrees that the Trust Agreement establishing the Pension Fund shall be deemed to be as though fully set forth herein and the terms thereof shall be deemed incorporated in this Agreement as though hereinafter set forth. The Employer agrees that upon execution of this Agreement it will be deemed a signatory to the Agreement of Trust made and establishing the Pension Fund. It is further agreed that the Union may be considered as an Employer for the purpose of making contributions to the Pension Fund on behalf of employees and officers of the Union.

1. Contribution Rates

All full-time employees who have completed one (1) year of service shall have a weekly contribution of \$93.50 effective as of 3/1/2009 and \$118.50 per week effective as of 3/1/2010 made on their behalf for each week they appear on the Employer's active payroll and receive wages.

All eligible part-time employees shall have a contribution of \$41.00 effective as of 3/1/2009 and \$51.96 as of 3/1/2010 made on their behalf for each week they appear on the Employer's active payroll and receive wages.

2. **Preferred Rehabilitation Plan.**

Pursuant to the Preferred Rehabilitation Plan for the 295/851 Pension and Health & Welfare Funds, the Company agrees to increase cumulative full-time contributions by \$1 per hour per year, effective 3/1/10, 3/1/11, 3/1/12, and 3/1/13, to be divided among Pension and Health & Welfare, as reasonably determined by the parties in the best interests of the various funds, and as approved of by the Trustees of the Pension and/or Health & Welfare Plan. The \$1 per hour per week must first be exhausted on Pension or Health & Welfare contribution increases necessary to maintain benefits. If the \$1 per hour per year increase is not exhausted by maintaining Pension and Health & Welfare benefits at their then current levels, the remaining funds may be used to increase benefit levels, if permitted by law. A pro-rata contribution in the same proportion to the increases resulting for full-time contribution rates will be made on behalf of part-time employees.

C. In the event the Employer defaults in payment of pension and/or welfare contributions as per Articles XVIII and XIX of this Agreement, and notice of such default is served upon the Employer via certified mail by the Administrator and/or the Trustees of the respective Funds, and copies are sent to the Union Pension and Welfare Fund Trustees, and if said default is not paid within five (5) days after said notice of default, then the provisions of Article VII (No Strike) A. of the Agreement shall be deemed cancelled, withdrawn and waived by the Employer and the Union may thereupon order and enforce a strike against the Employer in default, which shall not be considered a breach of this Agreement. The Fund Administrator, or the Trustees of each respective fund, shall have the right to inspect all books, records, papers and reports of the Employer, and to interview all employees of the Employer, as they, in their sole discretion, deem necessary to permit the Administrator and/or the Trustees of the Funds to determine whether the Employer is making full payments to the Funds of the amounts required by this Agreement. A determination on such audit and inspection to the effect that the Employer has failed to remit its required contribution shall be deemed a default within the meaning of this Article. In the event the Employer has within the previous twelve (12) month period been the recipient of a five (5) day notice of default as provided herein, any further default by said Employer shall be considered a breach of this Agreement and the Union, without notice to the Employer, may take such action as it deems necessary in accordance with the provisions of this Paragraph.

D. The Employer assumes full responsibility for coverage for all employees and in the event of any loss sustained by the employee or his family resulting from the negligence or failure of the Employer to make regular and timely contributions to the Fund, the Employer shall be personally liable for any such loss.

E. Payments to the Pension Fund shall not be continued during a strike.

F. The parties hereby confirm and approve the composition and membership of the Board of Trustees of the Pension Fund as now and hereafter constituted.

G. A duly authorized agent or representative of the Employer is to acknowledge the accuracy and to verify the contributions by affixing his signature in the space designated on the contribution form submitted by the Fund.

ARTICLE XX. VACATION, HOLIDAYS, AND LEAVE

A. Vacation

1. Full-Time And Regular Part-Time Employees With One (1) Or More Years of Seniority As of January 1st Of Any Given Year

All full-time and regular part-time employees shall receive paid vacations in accordance with the terms and conditions of this Section. Such employees with one (1) or more years of Employer seniority as of January 1st shall receive paid vacations in accordance with the following schedule.

<u>Years of Employer Seniority</u>	<u>Maximum Vacation Hours Entitlement</u>
One (1) year (12 months) but less than five (5) years (60 months)	2 weeks (based on employee's regularly scheduled hours)
Five (5) years (60 months) but less than twelve (12) years (144 months)	3 weeks (based on employee's regularly scheduled hours)
Twelve (12) years or more	4 weeks (based on employee's regularly scheduled hours)
Twenty (20) years or more	5 weeks (based on employee's regularly scheduled hours)

2. Minimum Straight-Time Work Hour Requirements For Full Vacation Entitlement
 - a. Full-time Employees: To be entitled to receive the maximum number of vacation hours allotted in accordance with the employee's Employer Seniority as of January 1st, as provided in A.1. above, a full-time employee had to work at least one thousand four hundred (1400) straight-time hours in the twelve (12) month period immediately preceding the applicable January 1st date (i.e., eligibility year).
 - b. Part-time Employees: To be entitled to receive the maximum number of vacation hours allotted under the schedule set forth in A.1. above, a part-time employee regularly scheduled to work at least sixteen (16) but not in excess of thirty-two (32) hours per week, had to work at least seven hundred fifty (750) straight-time hours in the twelve (12) month period immediately preceding the applicable January 1st date (eligibility year).
 - c. Paid time off from work: For the purposes of this Article, paid time off from work shall be deemed "time worked" for the calculation of the minimum applicable straight-time work hour standards for vacation entitlement.
3. Proration Of Vacation Hours For Full-Time And/Or Part-Time Employees With One Or More Years Of Employer Seniority As Of January 1st, Who Do Not Fully Satisfy The Minimum Work Hour Requirements Set Forth In A.2(a) And (b) of Article XX (Vacations).

Full-time and regular part-time unit employees with one (1) or more years of seniority as of January 1st of any given year, who work less than the minimum straight-time work hour requirements in an eligibility year for full vacation entitlement, shall be entitled to prorated vacation benefits. In such circumstances, the hours actually worked (including paid days off) in the eligibility year shall be divided by the applicable minimum straight-time work hour requirement (i.e., 1,400 hours for full-time employees; 750 hours for all part-time employees regularly scheduled to work 16 up to 32 hours per week), and the resultant sum shall be multiplied against the vacation schedule applicable to the employee in Paragraph A.1.(a), (b) or (c), based on the employee's years of Employer seniority.

Example:

(i) Full-Time Employee: A full-time employee with one (1) year, six (6) months seniority as of January 1, 2005, who worked (including paid time off) 1,300 straight-time hours between January 1, 2004 and December 31, 2004 (i.e., vacation eligibility year), shall be entitled to a prorated vacation consisting of 74 hours, as follows:

$$\begin{array}{lcl} \text{Maximum Vacation Entitlement} & 80 \text{ hours} \times \frac{1,300}{1,400} & = 74.28 \text{ hours (Rounded} \\ \text{(2x regular scheduled work week hours = 80 hours)} & & \text{down to 74)} \end{array}$$

(ii) Part-Time Employee: A part-time employee regularly scheduled to work twenty-five (25) hours per week, who has one (1) year, six (6) months seniority as of January 1, 2005 but who only worked (including paid time off) 600 straight-time hours between January 1, 2004 and December 31, 2004 (vacation eligibility year), shall be entitled to a prorated vacation consisting of 40 hours, as follows:

$$\begin{array}{lcl} \text{Maximum Vacation Entitlement} & 50 \text{ hours} \times \frac{600}{750} & = 40 \text{ hours} \\ \text{(2x regular scheduled work week hours = 50 hours)} & & \end{array}$$

4. Vacation Entitlement For Full-Time And/Or Part-Time Employees With One (1) Or More Years Of Employer Seniority Prior To January 1st Of Any Given Year, Whose Regular Scheduled Work Week Hours Changed (Either Upward Or Downward, Or Due To A Change In Status From Full-Time To Part-Time Or Vice Versa) During The Vacation Entitlement Year.

In the event an employee's status changed from full-time to part-time (due to a voluntary downgrade), or from part-time time to full-time (due to promotion), or the employee's regular scheduled work week hours changed in any manner (either upward or downward) during the vacation eligibility year, the employee's vacation entitlement shall be computed in accordance with the weekly average of all straight-time hours worked (including paid time off) in each such capacity, during the vacation eligibility year, as follows: Add the total number of all straight-time hours worked (including paid time off) in each full-time and/or part-time capacity in the eligibility year and divide said sum by 52 weeks; the resultant sum (weekly average straight-time hours worked) shall be multiplied against the maximum vacation entitlement set forth in the vacation schedule applicable to the employee in Paragraph A.1.(a), (b) or (c) above, based on the employee's years of Employer seniority, and this sum shall be subject to the minimum straight-time work hour requirements for full vacation entitlement as set forth in A.2.(a) and (b) and B. above. (If the weekly average hours equals or exceeds 32, the 1400 hour standard will apply; if the weekly average hours equals 32 or less hours, the 750 hour standard will apply).

Example

(a) Employee with one (1) year, six (6) months Employer seniority as of January 1, 2005, worked in a full-time capacity from January 1, 2004 to April 30, 2004 and accumulated 696 straight-time hours (including paid time off) in such capacity; thereafter from May 1, 2004 – December 31, 2004, the employee voluntarily downgraded to a part-time position with a regular scheduled work week of 20 hours per week, and accumulated 700 straight-time hours (including paid time off) in such capacity.

- (b) Total straight-time hours worked
in eligibility year
 $\frac{1396}{52 \text{ weeks}} = 26.84 \text{ average hours per week}$
- (c) $26.84 \times 2 = 53.7$, rounded up to 54 hours of paid vacation for the
April 1, 2005 – March 31, 2006 vacation year. (No
further proration required since the 750 work hour
standard was satisfied)

5. Vacation Entitlement For Employees With Less Than One (1) Year Of Employer Seniority Prior To January 1st.

Employees with less than one (1) year of service prior to January 1st of any given year, shall receive a prorated vacation based on the number of months employed from his/her hire date to January 1st. In calculating such prorated vacation entitlement, employees hired between the 1st and the 15th of a month shall receive full credit for the month; employees hired on or after the 16th of the month shall receive no credit for the month. For all months of employment thereafter up to January 1st, the employee must work at least 75% of the straight-time hours regularly scheduled to be worked in each such month in accordance with the employee's regular work week schedule in order to be credited for such month; paid time off shall be deemed time worked for such purposes. Failure to achieve such 75% standard shall result in no credit for the month. Moreover, all partial and/or fractional vacation hours shall be rounded to a whole number. If the fraction is .5 or above, the number will be rounded up; if the fraction is less than .5, it will be rounded down.

Accordingly, by way of example, if a full-time employee was hired on November 11, 2004, and worked (including paid time off) 75% of his/her regular scheduled work week hours in December 2004, the number of prorated vacation months between hire date and January 1, 2005 equals 2. The employee's earned vacation credit for the April 1, 2005 – March 31, 2006 vacation year is computed by dividing the number of credited months worked in the eligibility year (2004) by 12, and multiplying the sum by 80 hours (2x the employee's regular scheduled work week hours) which equals 13.3 hours ($2 \times 80 = 13.3$ hours). This sum is rounded down to 13 paid 12 vacation hours for the April 1, 2005 – March 31, 2006 vacation year.

Utilizing the same example as above for a part-time employee, whose regular work week schedule equals 20 hours, the part-time employee's vacation entitlement for April 1, 2005 – March 31, 2006 vacation year is 7 hours.

$$\frac{2}{12} \times 40 \text{ (2x employee's regular scheduled work week hours)} = 6.6, \text{ rounded up to } 7 \text{ hours}$$

6. Vacation Entitlement For Full-Time And/Or Part-Time Employees With Less Than One (1) Year Of Employer Seniority Prior To January 1st Of Any Given Year, Whose Regular Scheduled Work Week Hours Changed (Either Upward Or Downward Due To A Voluntary Downgrade, Or Due To A Change In Status From Full-Time To Part-Time Or Vice Versa) In The Initial Year of Employment Prior To January 1st.

In the event an employee's status changed from full-time to part-time (due to a voluntary downgrade), or from part-time to full-time (due to promotion), or the employee's regular scheduled work week hours changed in any manner (either upward or downward) during the employee's initial year of employment from date of hire to the following January 1st, the employee's vacation entitlement shall be computed in accordance with the number of credited months worked in said year in each such capacity, on the same basis as set forth in D. above (except, however, a change in status shall not be calculated until the following month).

Example:

Part-time employee regularly scheduled to work twenty (20) hours per week is hired August 20, 2004; said employee is promoted to full-time status on November 15, 2004; in September 2004, the employee worked (including paid time off) 75% of his/her regular scheduled work week hours and is credited for the month; in October 2004, the employee failed to work (including paid time off) 75% of his/her regular scheduled work week hours and is not credited for the month. In both November and December 2004, the employee worked (including paid time off) 75% of his/her regular scheduled work hours and is credited for both months.

Two (2) months (i.e., September and November) only have been credited for calculation of the part-time vacation entitlement. (August is not credited since employment commenced after August 15th; October is not credited since the employee failed to work the requisite 75% of scheduled work hours; November is credited because the 75% requirement was met and the change

to full-time status is not calculated until the following month. One (1) month only (December) has been credited for full-time vacation entitlement.

Calculation of Part-Time Vacation Entitlement

$\frac{2 \text{ months}}{12 \text{ months}} \times 40$ (2x employee's regular scheduled work week = 6.6 vacation hours

Calculation of Full-Time Vacation Entitlement

$\frac{1 \text{ month}}{12 \text{ months}} \times 80$ (2x employee's regular scheduled work week = 6.6 vacation hours

Total Vacation Hours for the 4/1/05 – 3/31/06 vacation year = 13 (i.e., $6.6 + 6.6 = 13.2$, rounded down to 13).

7. Vacation Scheduling And Usage.

(i) A vacation schedule shall be posted by the Employer within ten (10) calendar days following the completion of the first General Bid arising after the ratification date of this Agreement to enable employees to select the week(s) in which they desire to take vacation days during calendar year 2010. The schedule shall be completed within thirty (30) calendar days after the initial posting date. (For each vacation year thereafter, the vacation schedule shall be posted for bid in the 1st week of November and the vacation schedule must be completed by November 31st.)

(ii) The Employer shall have the right to schedule the maximum number of employees, by classification and shift, within a contractual Department who may be permitted to take vacation days off at any given time.

(iii) a. Available vacation weeks within each contractual department shall be scheduled in accordance with unit seniority for all shifts commencing within each of the following time periods:
A.M. (4:00 a.m. to 1:59 p.m.), P.M. (2:00 p.m. to 9:59 p.m.),
and Midnight (10:00 p.m. to 3:59 a.m.).

b. Available vacation weeks for Lead Personnel shall be scheduled in accordance with their unit seniority by a separate vacation bid, on the same basis as set forth above.

(iv) The vacation period for the eligible employees shall consist of consecutive days, provided that in the case of employees entitled to two (2) or more weeks vacation, the Employer may split the vacation into separate one (1) week periods with the consent of the eligible employee.

(v) The Employer may not change the time of an employee's vacation once scheduled, except by mutual consent.

(vi) Unit employees may use earned but unused vacation hours to offset unpaid FMLA leave. However, such vacation hours may not be used until after the exhaustion of "banked" and/or "regular" sick leave hours in the circumstances set forth in Article XX (Sick Leave).

(vii) Vacation pay shall be paid to the eligible employee before he starts vacation.

8. Holiday During Vacation

If a contractual holiday is observed during an employee's vacation period, that holiday shall be converted to a floater, subject to the rules set forth to the floater rules in this Agreement.

9. Involuntary Hospitalization During Vacation

Employees who are involuntarily hospitalized during their scheduled vacation may charge each day of such involuntary hospital confinement, which falls during their regular work week, against their "banked" sick hours, if any, followed by their earned but unused "regular" sick hours, if any (i.e., employee's regular work week is Monday-Friday. The employee is hospitalized Thursday-Sunday while on vacation. Only two days – Thursday and Friday – may be charged against accumulated sick leave). Under no circumstances may there be a compounding of vacation pay benefits and sick pay benefits. Any and all vacation days lost due to involuntary hospital confinement, which are properly charged against accumulated sick hours, shall be rescheduled at a time or time mutually agreeable to the Employer and the employee.

10. Vacation Pay Upon Death Or Termination of Employment

In the event an employee severs his employment with the Employer for any reason, the employee shall receive all earned but unused vacation pay to which the employee is contractually entitled within two (2) weeks following his separation from employment. Moreover, in case of the death of an employee, the vacation pay due such employee shall be paid to the employee's spouse, or as may be applicable, estate within two (2) weeks after receipt of death certificate.

B. Holidays

1. Regular Paid Holidays

All full-time and regular part-time employees shall receive the following paid holidays:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Each of the foregoing holidays shall be observed on the calendar day on which it actually falls. For an employee whose shift covers two (2) calendar days, one of which is a contractual holiday, the shift on which the holiday is recognized will be the one which commences on the calendar day on which the contractual holiday falls.

Regular part-time employees shall receive holiday pay pro-rated in accordance with the employee's regularly scheduled straight-time work week hours. Such holiday pay shall be equal to the employee's regularly scheduled weekly hours of duty divided by five (5), but in no event more than eight (8) hours of holiday pay, regardless of the scheduled worked.

2. Floating Holidays

(i) Full-Time Employees: Except as otherwise provided below, each non-probationary full-time employee shall receive paid floating holidays (computed at the employee's regular straight-time hourly rate not to exceed 8 hours per day) in accordance with his Employer seniority as of January 1st of any given year to be used in the ensuing twelve (12) months, as set forth below:

<u>Years of Employer Seniority</u>	<u>Maximum Number of Paid Floating Holiday Hours</u>
(i) Less than one (1) year	16
(ii) One (1) year but less than two (2) years	24
(iii) Two (2) years but less than six (6) years (i.e., 72 months)	32
(iv) Six (6) years but less than ten (10) years (i.e., 120 months)	40
(v) Ten (10) years (i.e., 120 months or more)	56

During their initial year of employment, non-probationary full-time unit employees shall receive paid floating holiday hours, as set forth below:

<u>Month In Which Full-Time Employee Successfully Completes Probationary Period After Hire</u>	<u>Floating Holiday Hour Entitlement (Following Probationary Period to December 31st)</u>
January-June	8
July-December	0

(ii) Part-Time Employees

a. Less Than Ten (10) Years Seniority

Effective January 1, 2007, each non-probationary regular part-time employee (i.e., regularly scheduled to work at least 16 but not in excess of 32 hours per week) who has less than ten (10) years Employer seniority as of January 1st of any given year (on and after 1/1/07) shall receive paid floating holiday hours in accordance with the schedule set forth in B.1(i), (ii), (iii) or (iv) above, prorated in accordance with the employee's regular scheduled straight-time work week hours.

Example:

Part-time employee with two (2) but less than six (6) years Employer seniority as of January 1st, whose regular scheduled straight-time hours equals twenty (20) hours, shall receive 12 paid floating holiday hours for use in the ensuing calendar year, as follows:

$$\frac{20}{40} \times 24 = 12 \text{ paid floating holiday hours}$$

For each regularly scheduled work day designated and observed as a floating holiday, the employee shall be paid at his regular straight-time hourly rate of pay for all hours regularly scheduled for such day, but in no event in excess of the employee's maximum floating holiday hours entitlement for the applicable calendar year.

b. Ten (10) Years Seniority Or More

Each regular part-time employee who has ten (10) or more years of Employer seniority as of January 1st of any given year (on and after 1/1/07), shall receive paid floating holiday hours, prorated on the very same basis set forth in B.2(a) above, except, however, the maximum number against which to apply the proration shall be forty (40) hours. (The 48 hour maximum number in B.1.(v) is solely for full-time employees).

3. Paid Floating Holidays For Unit Employees For Use In The Calendar Year In Which The Employee Was Hired.

During the initial year of employment, non-probationary full-time unit employees shall receive paid floating holiday hours, as set forth below:

<u>Month In Which Full-Time Employee Successfully Completes Probationary Period After Hire</u>	<u>Floating Holiday Hour Entitlement (Following Probationary Period to December 31st)</u>
January-June	8
July-December	0

Non-probationary part-time employees (hired on or after 1/1/07), shall receive such floating hours, prorated in accordance with their regular scheduled straight-time work week hours.

4. Effect of Change of Status: In the event an employee's status changed from full-time to part-time (due to a voluntary downgrade) or from part-time to full-time (due to promotion), or the employee's regular scheduled work week hours changed, in any manner (either upward or downward) during the calendar year in which floating holiday hours have been granted, the employee's earned but unused floating holiday hours entitlement at such time shall be adjusted (either upward or downward) as of the 1st day of the month immediately following the date of the change in status or work week, as follows:

- (i) Compute the employee's new floating holiday hour entitlement in accordance with the applicable schedule set forth in Paragraphs B. or C. above, based on the number of months the employee worked in each such status during the calendar year (for status changes occurring from the 1st to the 15th of the month, such new status shall be credited for the entire month in which the change in status occurred.
- (ii) For status changes occurring on and after the 16th of the month, the pre-existing status shall be credited for the month); add the respective numbers together (fractions of .5 or above, rounded up; below .5, rounded down), and then deduct all paid floating holiday hours previously used by the employee in the calendar year.
- (iii) The resultant sum is the number of floating holiday hours to which the employee is entitled (absent additional changes in status or work week for the remainder of the calendar year.

5. Holiday Pay

(i) Should any of the contractual holidays provided in Paragraph A. above fall on a unit employee's scheduled work day, the employee shall be paid for same at his regular straight-time hourly rate of pay. For full-time employees, such payment shall not exceed eight (8) hours per day; for part-time employees, payment shall be equal to the part-time hours regularly scheduled for such day, not to exceed the part-time employee's maximum, prorated holiday hour entitlement for recognized holidays within the applicable calendar year.

(ii) In the event a recognized holiday is observed on an employee's regularly scheduled day off, the employee shall be paid for such holiday.

(iii) If a recognized holiday is observed during an employee's scheduled vacation, the employee shall receive a floater, subject to the floater rules set forth in Article XX.

(iv) To be entitled to holiday pay, an employee must work his regularly scheduled work day immediately preceding the recognized holiday and his regularly scheduled work day immediately following the holiday, unless such absences are due to scheduled vacations, floating holidays, or otherwise expressly excused by the Employer.

(v) Except as otherwise provided herein, an employee whose bidded shift falls on a contractual holiday shall report for duty on such holiday and work his regular scheduled shift. If, however, the Employer reasonably anticipates or expects that there will be a significant reduction in work volume on such holiday, the Employer may in the exercise of its business discretion post a holiday bid at least 14 calendar days prior to the holiday, by classification, for each scheduled shift on such holiday commencing within each of the following time periods: a.m. (4:00 a.m. to 1:59 p.m.); p.m. (2:00 p.m. to 9:59 p.m.) and midnight (10:00 p.m. to 3:59 a.m.). The bid shall list the reduced number of unit employees within the applicable classification needed for holiday coverage on each such shift within the foregoing time periods. Each shift within each respective time period shall be filled by seniority from among those employees within the same classification whose regular bidded shift (per the General Bid) fell on such holiday within the same time period (i.e., a.m. employees may bid a.m. shift vacancies only; p.m. employees on p.m. shifts and midnight employees on midnight shifts). If an insufficient number of employees bid for the available positions, vacancies shall be filled as aforesaid in inverse order of seniority.

6. Payment For Work Performed On A Recognized Holiday

(i) For all work actually performed on New Year's Day, Memorial Day and Labor Day, the employee shall receive holiday pay for such holiday as set forth above, and in addition thereto, shall be paid at the rate of time and one-half ($1\frac{1}{2}$) his regular straight time hourly rate of pay for each and every hour, or fraction thereof, actually worked on such day (i.e., full-time employee works 12 hours on Labor Day; the employee receives holiday pay equal to 8 hours of his regular straight-time rate of pay and, in addition thereto, receives overtime pay at the rate of $1\frac{1}{2}$ for all 12 hours of actual work performed on such day. Under no circumstances shall there be a pyramiding of the $1\frac{1}{2}$ rate for hours worked in excess of 8 as set forth in Article XVII (Overtime) with the $1\frac{1}{2}$ rate for all hours worked on such recognized holiday).

(ii) For all work actually performed on Independence Day, Thanksgiving Day and Christmas Day, the employee shall receive holiday pay for such holiday as set forth above, and in addition thereto, shall be paid at the rate of two times (2x) his regular straight-time hourly rate of pay for each and every hour, or fraction thereof, actually worked on such day (i.e., full-time employee works 12 hours on Christmas; the employee receives holiday pay equal to 8 hours of his/her regular straight-time rate of pay and, in addition thereto, receives overtime pay at the rate of 2x for all 12 hours of actual work performed on such day. Under no circumstances shall there be a pyramiding of the $1\frac{1}{2}$ rate for hours worked in excess of 8 as set forth in Article XVII (Overtime) with the 2x rate for all hours worked on such recognized holiday).

7. Scheduling Of Floating Holidays

Floating holiday shall be posted for bid along with the annual vacation schedule. Floating holidays which are not bid shall be requested by the employee at least seventy-two (72) hours in advance. The floaters shall be scheduled by the Employer with due consideration for seniority and

for maintaining efficiency of the Employer's operations. Within such framework, employee requests for floaters shall not unreasonably be denied by management.

8. Payment For Earned But Unused Floaters

(i) All earned but unused floating holidays as of December 31st of any given year, shall be paid to unit employees in the last pay period of January in the following calendar year. In the event of an employee's death at any time during a calendar year, all earned but unused floating holidays shall be paid to his designated beneficiary or estate.

But, if an employee's employment is severed for any other lawful reason, payment for earned but unused floaters shall not be made.

(ii) Payment for unused floaters shall be made at the applicable rate for such employee on December 31st, or as may be applicable, on the day employment ceases due to the death of the employee.

9. Floater Usage

Unit employees may use floaters for any reason they deem appropriate, including, but not limited, to offset unpaid FMLA leave. However, such floaters may not be used until after the exhaustion of (i) "banked" and/or "regular" sick leave hours and (ii) earned but unused vacation hours in the circumstances set forth in Article XX (Sick Leave and Vacation sections).

10. Non-Entitlement To Holiday Pay

Holiday pay shall not be provided to any employee who, on the day the recognized holiday is observed, is (1) on an unpaid leave of absence; (2) on layoff; or (3) not otherwise actively employed by the Employer.

C. Sick Leave

1. Full Time Employees

Each non-probationary full-time employee (i.e., regularly scheduled to work 40 hours per week) shall receive paid sick leave hours (computed at the employee's regular straight-time rate of pay), in accordance with his/her Employer seniority as of January 1st of any given year, to be used in the ensuing calendar year, as set forth below:

<u>Years of Employer Seniority As Of January 1st</u>	<u>Maximum No. of Paid Sick Leave Hours</u>
1. Less than one (1) year	48
2. One (1) year but less than two (2) years	56
3. Two (2) years or more	64
4. Ten (10) years or more	80

2. Part-Time Employees

Each non-probationary part-time employee (i.e., regularly scheduled to work at least 16 but not in excess of 32 hours per week), shall receive sick leave hours in accordance with Paragraphs C 1, 2, 3 (C.4, above, is applicable solely to full-time employees), pro-rated in accordance with the employee's regular scheduled straight-time work week hours.

Example:

Part-Time employee with one (1) but less than two (2) years Employer seniority as of January 1st, whose regular scheduled straight-time work week hours equals twenty (20) hours, shall receive 28 sick leave hours for use in the ensuing calendar year, as follows:

$$\frac{20}{40} \times 56 = 28 \text{ sick leave hours}$$

For each regularly scheduled work day lost due to employee sickness, the employee shall be paid at his/her regular straight-time hourly rate of pay for all hours regularly scheduled to be worked on such day, but in no event in excess of the employee's maximum sick hours entitlement for the calendar year.

3. Sick Leave Hours For Unit Employees For Use In The Calendar Year In Which Employee Was Hired.

During the initial year of employment, non-probationary full-time employees shall receive sick leave hours, as set forth below:

<u>Month In Which Employee Successfully Completes Probationary Period Of Hire</u>	<u>Sick Hour Entitlement (Following Probationary Period To December 31st)</u>
January-April	48 hours
May-July	40 hours
August-September	32 hours
October	24 hours
November	16 hours
December	8 hours

Non-probationary part-time employees shall receive prorated sick leave hours on the same basis as set forth in Paragraph C(2). above.

4. Sick Leave Entitlement For Full-Time And/Or Part-Time Employees Whose Regular Scheduled Work Week Hours Changed (Either Upward Or Downward Due To A Change In Status From Full-Time To Part-Time Or Vice Versa) During The Calendar Year In Which Sick Leave Hours Have Been Granted.

In the event an employee's status changed from full-time to part-time (due to a voluntary downgrade), or from part-time to full-time (due to promotion), or the employee's regular scheduled work week hours changed in any manner (either upward or downward) during the calendar year in which sick leave hours have been granted under paragraphs C(1), (2), or (3) of this section, the employee's earned but unused sick hours in effect at such time shall be adjusted (either upward or

downward) as of the first day of the month immediately following the date in change in status or work week, as follows:

Compute the employee's new sick leave entitlement in accordance with the applicable schedule set forth in Paragraphs A., B., or C. above, based on the number of months the employee worked in each such status during the calendar year (for status changes occurring from the 1st to the 15th of the month, such new status shall be credited for the entire month in which the change in status occurred; for status changes occurring on and after the 16th of the month, the pre-existing status shall be credited for the month); add the respective numbers together (fractions of .5 or above, rounded up; below .5, rounded down), and then deduct all paid sick leave hours previously used by the employee in the calendar year. The resultant sum is the number of sick leave hours to which the employee is entitled (absent additional changes in status or work week) for the remainder of the calendar year.

5. "Banked" Sick Leave Hours And Usage

- (i) All accumulated (i.e., not used) sick leave hours earned by unit employees pursuant to DHL policies and procedures prior to January 1, 2005, shall be carried over, (less any such previously accumulated sick hours actually used on or after January 1, 2005 to and including the ratification date of this Agreement), for future usage during the term of this Agreement.
- (ii) "Banked" sick leave hours, as aforesaid, must be used and exhausted to offset unpaid time off prior to using "regular" sick leave hours (provided under Paragraphs A. and B. above), vacation hours and/or floating holidays, in the following circumstances:
 - a. To cover all work days lost during the waiting period prior to the commencement of short term disability (STD) or Workers' Compensation benefits;
 - b. To pay the difference between STD benefits and the employee's regular straight-time hourly rate of pay; and
 - c. To offset unpaid FMLA leave in connection with the serious health condition of the employee, or the employee's parent, spouse or child.
- (iii) Moreover, "banked" sick leave hours must be used and exhausted prior to using "regular" sick days, to substitute for periods of involuntary hospital confinement occurring on days previously scheduled as vacation days.

(iv) “Banked” sick leave hours may be used, at the employee’s option, in the following circumstances:

- a. To offset unpaid FMLA leave in connection with the birth of a child of the employee in order to care for such child, and/or the placement of a child with the employee for adoption or foster care; and
- b. For all absences for which “regular” sick leave was properly used and exhausted.

(v) Unused “Banked” sick leave hours shall not, under any circumstances, be paid out to an employee on his/her separation from employment for any reason (i.e., termination, quit or layoff etc.), or to the employee’s estate upon the employee’s death.

6. “Regular” Sick Leave Hours And Usage

- (i) “Regular” sick leave hours shall be used and exhausted, prior to using “banked” sick leave hours, if any, to compensate an employee for absences from work in connection with:
 - a. An employee’s bona fide sickness or non-work related injury or disability for up to the first three (3) consecutive work days thereof, or for any longer period of time for which FMLA coverage is not provided;
 - b. An employee’s own medical, dental or vision care appointments; or

- c. An employee's need to arrange for emergency care plans or otherwise to act responsibly in the event of medical situations of persons who depend on the employee (which are not covered by FMLA).
- (ii) "Regular" sick leave hours shall be used and exhausted, prior to using vacation days or floating holidays, following the exhaustion of all "banked" sick days in connection with the circumstances set forth in F.2 above.
- (iii) "Regular" sick leave hours may be used, at the employee's option, to offset unpaid FMLA leave in connection with the birth of the employee's child in order to care for such child, and/or the placement of a child with the employee for adoption or foster care, or (following the exhaustion of "banked" sick hours, if any, under F.3 above) to cover periods of involuntary hospital confinement occurring on days previously scheduled as vacation days.

7. Payment Of Earned But Unused "Regular" Sick Leave Hours

- (i) Unused "regular" sick leave hours as of December 31st of any given year, shall be payable in the last pay period of January in the following calendar year; for employees who sever their employment for any reason during the calendar year, payment thereof shall be made within thirty (30) calendar days thereafter. Payment for unused sick days shall be made in accordance with the rate prevailing for such employee on December 31st or, as applicable, on the day he/she severs employment for any reason. (In the event of an employee's death, all earned but unused sick hours shall be paid to the employee's estate).
- (ii) To be eligible for payout of unused "regular" sick hours, the employee must have actually worked ninety (90) or more days during the calendar year (paid days off shall not be deemed time actually worked in this Article), and the employee must have remained on the seniority roster (active or inactive) for the complete year.
- (iii) The Employer may require verification of an employee's eligibility for sick leave hours ("regular" or "banked") in accordance with applicable law. In all cases involving STD or Workers' Compensation, an employee must present a "medical release" from his/her physician prior to returning to work, certifying that the employee is fully capable of performing the essential functions of his/her job, with or without a specified "reasonable accommodation(s)."

- (iv) Sick leave hours (regular or banked) shall be payable from the first (1st) day of illness.
- (v) An employee shall not be entitled to use sick leave hours (regular or banked) if, at the time of the illness or disability, the employee is on layoff, contractual holiday, any other non-STD or non-FMLA leave (i.e., jury duty leave, military leave, bereavement leave, personal leave), or otherwise is not actively at work under the provisions of this Agreement.

D. Family and Medical Leave Act

The Company will comply with the requirements of the Family and Medical Leave Act (“FMLA”), as supplemented and improved herein as follows: The twelve (12) week unpaid FMLA leave shall be provided to unit employees with one (1) or more years of service who have worked at least one thousand (1,000) hours during the twelve (12) month period immediately preceding the commencement date of this leave (i.e., a rolling twelve (12) month period).

E. Bereavement Leave

1. Non-probationary unit employees shall be granted up to three (3) days of paid leave at regular straight-time rates of pay as compensation for actual work days lost due to the death of a member of the employee's "immediate family," as defined as a spouse, domestic partner, parents, step-parents, including in-laws, siblings and step-siblings, including in-laws, grandparents, children, grandchildren, step-grandparents and step-grandchildren, including in-laws, and legal guardian relationships. In addition, an employee shall not be entitled to bereavement leave if, at the time of death, the employee is on a contractual holiday, leave of absence, layoff or otherwise not actively at work for the Employer.

2. All such bereavement leave must be taken within seven (7) calendar days after the death, or it is waived.

3. Upon request, the employee must submit a death certificate or other proof of death to the Employer.

4. Should an employee require additional time off from work in connection with the death, the employee may request to use unpaid personal time off or vacation time. Such requests shall not be unreasonably denied.

F. Jury Duty Leave

1. Non-probationary full-time employees required to report for jury duty shall be paid the difference between their regular straight-time pay and the amount they receive as jury pay for each regularly scheduled work day on which they are required to serve jury duty, not to exceed eight (8) hours per day and/or one hundred sixty (160) hours per calendar year. Non-probationary part-time employees shall receive jury duty pay pro-rated in accordance with the part-time employee's regularly scheduled work week.

2. Employees excused from jury duty before the completion of their shift, shall call their supervisor for direction on whether to return to work for the balance of the shift.

3. When an employee is notified to serve on jury duty, he must immediately notify his supervisor and provide the supervisor with a copy of the notice.

4. An employee shall not be entitled to leave for jury duty if, at the time of actual jury service, he is on a contractual holiday, vacation, layoff, any other contractual leave, or otherwise is not actively at work under the provisions of this Agreement.

G. Personal Leave

1. Regular full-time and/or part-time employees with one (1) or more years of Employer seniority may be provided, upon written permission of the Employer and the Union, with an unpaid personal leave of absence of up to thirty (30) days. Such thirty (30) day leave may be extended with the written permission of the Employer and the Union for an additional period of time up to but not in excess of twelve (12) weeks within a calendar year.

2. All earned but unused vacation hours, if any, must be used at the beginning of, and concurrent with, said personal leave. Personal leave may not be used to seek and/or obtain other gainful employment outside DHL. In addition, unless otherwise expressly provided herein, employees on personal leave shall continue to accrue seniority but shall not be entitled to any of the fringe benefits set forth in this Article ____.

3. Falsely obtaining, or attempting to falsely obtain a personal leave will result in termination under the provisions of Category "A" of Article X (Discipline).

H. Military Leave

The employment rights of employees covered by this Agreement who become engaged in service in any branch of the United States military, state militia, or National Guard shall be governed by the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

ARTICLE XXI. STANDBY PAY AND PROCEDURES

A. Operational requirements at the Gateway sometimes necessitate that unit employees serve in a "standby capacity" for a possible call to duty at any time (day or night, weekends or scheduled days off) to perform work or services during emergencies and/or to provide services on a contractual holiday due to rescheduling of flights, severe weather conditions or other significant operational crises, subject to the standby terms and conditions set forth herein.

B. The Employer may, as it deems appropriate, designate one (1) or more qualified employees within a contractual department to be available on a standby basis (either daily, weekly or a combination thereof) to receive phone calls and/or to report to work if the need arises. Standby status shall be offered to qualified employees in the applicable contractual department in accordance with unit seniority.

- C. 1. A standby employee shall receive an allowance of \$30.00 for each day on which he serves standby duty, whether or not actual work duties are performed on such day.
2. A standby employee who is called to and actually performs duties on behalf of the Employer while on standby assignment shall be compensated for all time actually worked on such standby call or calls (on a portal to portal basis) in addition to the standby allowance provided in C.1, above.

D. An employee on standby shall not be required to remain at his residence of record, but he shall:

1. be easily accessible for contact by the Employer via telephone, cellular phone or paging equipment or, as directed, the standby employee shall contact a designated supervisor to ascertain if and/or when he needs to report to work;

2. be readily available and fit to perform work when called; and
3. be en route to the facility within fifteen (15) minutes after being called or paged.

E. At all times during standby duty, the standby employee shall not consume any alcoholic beverages whatsoever.

F. An employee on standby may arrange for another qualified employee to substitute for him on a daily or weekly basis, provided management approval has been obtained in advance. Such approval shall not unreasonably be withheld.

G. An employee on standby who is not readily available and fit to report to work when called, or otherwise does not timely respond to a call to work, shall forfeit all entitlement to the daily standby allowance and he shall also be subject to appropriate discipline.

ARTICLE XXII. UNION BUSINESS

A. Leave to Conduct Union Activities

The Employer shall grant an unpaid leave of absence to an employee, when he is elected or appointed as a full-time officer or business agent of Local 295. During that leave of absence, the employee shall maintain and accumulate seniority. At the conclusion of that leave of absence, he shall be granted re-employment, provided that the former position still exists, the employee is qualified to perform the duties thereof, and he remains a member in good standing in the Union, as defined by federal law.

B. Bulletin Board

The Employer will mount one (1) bulletin board, purchased and supplied by the Employer, at its Building 263 facility in a location available to all unit employees, for the exclusive use of Local 295 business. The size of such bulletin board shall be three (3) feet by four (4) feet. Material to be posted shall not contain anything of a controversial nature, anything derogatory to the Employer, its

officers, directors, managers and/or supervisors or employees, or anything that will affect Employer operations detrimentally. Union notices may not be posted anywhere within the facility except on the Union Bulletin Board.

C. Stewards

1. The Employer recognizes the right of the Union to designate no more than one (1) full-time unit employee to serve as the primary steward for the unit covered hereunder, and no more than two (2) full-time unit employees to serve as alternate stewards, each one (1) of whom may not act and may not serve in the official capacity of the primary steward, except in the absence of such primary steward. Accordingly, the primary steward shall be designated by the Union from unit employees assigned to an a.m. shift. The alternates may be selected by the Union as it so chooses. Should the primary steward be absent from work for any reason, the Union may at its option, designate another unit employee from an a.m. shift to serve in such steward capacity during the primary steward's absence. Notification of such designation shall be provided promptly to the Employer's Senior Operations Manager or designee.

2. The Union shall notify the Employer, in writing, of the selection and/or change of the primary and/or alternate stewards.

3. The authority of the primary and alternate stewards designated by the Union shall be limited to, and shall not exceed, the following duties and activities:

- (i) The investigation and presentation of grievances and the participation in the Grievance and Arbitration procedures, including Employer conducted investigatory interviews, as provided in Articles VIII (Investigatory Interviews), and XI (Grievance and Arbitration Procedure) of this Agreement;
- (ii) The collection of dues when authorized by the appropriate Local Union official;

(iii) The transmission of such messages and information which shall originate with, and are authorized by the Local Union, or its officers, provided such messages and information:

- a. have been reduced to writing, or
- b. if not reduced to writing, are of a routine nature and do not involve work stoppages, slow-downs, refusals to handle goods, or any other interference with the Employer's business.

(iv) Assist in the completion of the Bid process, as specified in Article XXVII (Work Week section), in accordance with area practice.

4. Should it become necessary for urgent reasons for the steward to confer with a unit employee(s) on work time and/or in actual work areas within the facility or on the Employer's premises with respect to a disciplinary matter or in connection with the investigation of a grievance, the steward may do so, without loss of pay or time, upon prior notification to supervision.

5. The primary steward shall be granted super seniority for layoff and recall purposes only; any additional application of super seniority for the primary steward must be justified as being directly related to the proper performance of the primary steward's duties as a steward and as permitted by applicable law. No shop steward shall be granted automatic overtime.

6. The performance of steward duties during work time by the primary and/or alternate stewards shall not be abused. Should the Employer believe that a steward is abusing or otherwise improperly taking advantage of the steward duties provided herein, the Employer shall promptly bring such matter to the attention of the Union. If a satisfactory resolution is not achieved, the Employer may submit the matter directly to arbitration for final resolution.

7. (i) The primary and/or alternate stewards have no authority to take strike action, or any other action interrupting the Employer's business, except as authorized by official action of the Union. The Employer recognizes these limitations upon the authority of stewards, and shall not hold the Union and/or its officers or agents liable for any unauthorized acts.
- (ii) The Union reserves the right to remove the primary steward and/or alternate steward(s) at any time, for the good of the Union as the Union, in the exercise of its sole discretion, deems appropriate. Neither the primary steward nor alternate stewards shall be discriminated against by the Employer or its managers/supervisors for the faithful performance of their steward duties.
- (iii) The primary steward and each alternate steward are employees of DHL and have no managerial or supervisory authority. Management has the sole authority to direct employees in the performance of their duties.

8. In the event a part-time employee is elected or appointed as a steward, he/she shall be assigned to an available, full-time shift if at all reasonably possible.

9. Upon two (2) weeks advance, written notification to the Employer by the Union, a steward (either the primary or an alternate – but in no event more than one at a time) may attend a Union conducted training session (not to exceed 2 sessions per calendar quarter) without loss of pay (up to but not in excess of 8 hours per session). Payment is to be made only in those circumstances where the employee attends such training on his/her regularly scheduled work day.

10. In the negotiations for the successor Collective Bargaining Agreement, the Employer shall pay up to but not in excess of three (3) unit employees designated by the Union as members of the Union's negotiation team, at regular straight-time rates, for all regular scheduled work days lost in connection with such employees' participation in and attendance at scheduled negotiation sessions between the Union and the Employer. (Payment shall not exceed 8 hours per day and/or 40 hours per week.)

ARTICLE XXIII. ATTENDANCE/LATENESS CALL-IN REQUIREMENTS AND PROCEDURE

A. Regular and timely attendance is a requirement for all employees. Except in extreme emergencies, all absences, including those relating to illness or injury, shall be reported daily by the employee to his immediate supervisor or, in his absence, to another designated Employer official, or, as necessary, to the Control Center, as early as possible, but in no event less than one (1) hour prior to the beginning of the employee's shift. Excessive lateness shall be reported as well, as early as possible, in accordance with the provisions of B-E herein.

B. The applicable telephone number of the immediate supervisor or other designated Employer representative shall be provided to unit personnel in writing. In the event the supervisor and/or other designated Employer representative does not answer the employee's call, the employee shall leave a clear voice mail message with the immediate supervisor and/or designated Employer representative providing the information listed in Paragraph D below and, in addition thereto, shall report the absence or excessive lateness to the Control Center.

C. Absence or lateness reports shall not be reported by fellow employees, friends, neighbors, relatives or other persons, except where extreme circumstances reasonably prevent the employee from personally reporting the lateness or absence.

D. In cases where the absence or lateness is reported over the telephone, the employee shall state his name, the reason for not reporting to work and the anticipated duration of the lateness or absence.

E. The failure to call in altogether or in a timely manner in accordance with the requirements of this Article shall constitute a Category "C" violation under the Disciplinary Article of this Agreement and, in addition thereto, may result in the forfeiture of sick pay for the day(s) of absence.

ARTICLE XXIV. DHL DUI/DWI POLICY AND PROCEDURE

The following policy and procedure in connection with DUI/DWI citations for off-duty misconduct shall be fully complied with by all unit Clearance Clerks in bidded positions that require them to drive Company vehicles during the life of this Agreement and all extensions thereof.

A. The Clearance Clerk (hereinafter referred to as “affected unit employee”) must notify his supervisor in writing that he has received a DUI/DWI citation. Failure to notify the supervisor when he/she has received the citation will result in discharge when discovered.

B. The affected unit employee will be permitted to continue driving for as long as his license is valid and DHL can randomly test for alcohol during that period while the summons is adjudicated.

C. If (when) the affected unit employee loses his/her license, he will be suspended from work for a period equal to the length of time the license is revoked for the DUI/DWI conviction, or for a period not to exceed 365 days, whichever occurs sooner. The affected unit employee must make suitable arrangements for self payment of health and welfare and pension payments during the period of suspension. This does not apply when a person’s license has been modified to permit driving for work purposes.

D. If the affected unit employee fails to complete all the terms of his sentence and therefore has his license revoked longer, he is discharged.

E. If (when) the affected unit employee satisfies all the terms of his/her sentence for DUI/DWI and has his/her license reinstated, then he will be reinstated to his job with his/her seniority rights, provided the license was reinstated within 365 days following the commencement of the suspension provided in Paragraph C., above.

F. The Company may replace such vacant full-time position as it deems appropriate subject to this Agreement.

G. This is a “one-time” benefit only. If at any time thereafter the affected unit employee is again guilty of an off-the-job DUI/DWI conviction, and loses his/her driver’s license, he/she is discharged.

H. This whole agreement is applicable to the loss of driver's license for a DUI/DWI due solely to alcohol intoxication.

I. If the employee fails to accept the first job that is available and for which he/she is qualified at the JFK Gateway, the employee is discharged.

ARTICLE XXV. UNIFORM POLICY

The Employer may, at its option, provide employees with uniforms to be worn during all working hours, including standby. Such uniforms, if provided, shall be at no cost to the employee. Worn-out uniforms will be replaced by the Employer at no cost to the employee, provided the worn-out uniform is returned to the Employer. The nature, color and style of such uniform shall be vested solely with the Employer. Each employee to whom a uniform has been issued shall be expected to report to work each day in a clean uniform.

ARTICLE XXVI. CLEAN AND NEAT APPEARANCE

It is expressly recognized and agreed herein that DHL is engaged in a highly competitive service business that requires it to be acutely sensitive to the needs, requirements and expectations of its customers. Accordingly, all employees shall maintain a clean and neat personal appearance and, otherwise, dress in strict accordance with the Employer's reasonable dress code. Facial hair, including but not limited to, beards, goatees and moustaches, must be clean and neat in appearance, appropriate for the work environment, and in compliance with health and safety standards. (Otherwise, a clean shaven appearance must be maintained).

ARTICLE XXVII. MISCELLANEOUS

A. Work Week

1. The regular work week for full-time employees shall be forty (40) hours, consisting of any five (5) calendar days within the Employer's seven (7) consecutive calendar day payroll period. The regular work day for full-time employees consists of any eight (8) consecutive hours, excluding an unpaid meal period as provided below. Days off from work for a full-time employee shall be scheduled on consecutive calendar days. The applicable payroll period within which to determine wage payments and overtime entitlement shall be Monday to Sunday, or such other period as reasonably established by the Employer on at least two (2) weeks advance notice to the Union.

2. An employee's regular work week may not be reduced or in any way be modified within a pay period to prevent, offset or avoid the performance of work on an overtime basis during such payroll week.

B. Meal Period

Employees who work at least 6 hours in a day shall be entitled to a 30-minute unpaid meal break which shall be scheduled to start on or after the fourth (4th) hour of the employee's shift but prior to the commencement of the sixth (6th) hour.

C. Break Periods

1. Full-Time Employees. Full-time employees (i.e., regularly scheduled to work 40 hours per week) shall be eligible to receive two (2) fifteen (15) minute paid breaks during the course of their regularly scheduled work day, as assigned by the Employer in accordance with the operational needs of the business. If at all reasonably possible, the first such break period will be scheduled during the first half of the employee's shift, and the second break shall be scheduled during the second half of the employee's shift.

2. Part-Time Employees. Regular part-time employees who perform work duties for the Employer for less than eight (8) hours on any given day (whether regularly scheduled or not) shall be eligible to receive one (1) fifteen minute paid break during the course of their regular work day, as assigned by the Employer in accordance with the operational needs of the business.

Part-time employees who perform work duties for the Employer for eight (8) or more hours on any given day (whether regularly scheduled or not) shall be eligible to receive two (2) fifteen (15) minute breaks on the very same basis such breaks are provided to full-time employees. Except as otherwise provided by federal or state law, an employee's failure to utilize or take such breaks (due to the voluntary action of the employee, or due to the Employer's inability to schedule for legitimate operational reasons) during the course of his shift shall not be compensable.

D. Pay Days

Employees are paid weekly. However, payday be changed by the Employer on prior written notification to the Union.

E. Federal And State Laws.

1. The Employer shall protect employees with Workers' Compensation Insurance, Social Security, Unemployment Insurance, State Disability and any other insurance as required by Federal and State Laws.

2. The Employer agrees to cooperate toward the prompt disposition of employee on-the-job injury claims. An employee who is injured on the job and is sent home or to a hospital, or who must obtain medical attention, shall receive pay at the applicable hourly rate for the balance of his regular shift on that day. An employee who has returned to his regular duties after sustaining a compensable injury who is required by the Workers' Compensation doctor to receive additional medical treatment during his regularly scheduled working hours shall receive his regular hourly pay for such time. In the event that an employee sustains an occupational illness or injury while away from the facility, the Employer shall provide transportation by bus, train, plane or automobile to the facility if and when directed by a doctor.

3. The Employer agrees to provide any employee injured locally, transportation at the time of injury, from the job to the medical facility and return to the job, or to his home if required.

4. In the event of a fatality, arising in the course of employment, while away from the facility, the Employer shall return the deceased to his home.

5. The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement when employees refuse to operate such equipment. All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other employees until a qualified mechanic has adjusted the complaint. After equipment is repaired, the Employer shall place on such equipment an "OK" in a conspicuous place so the employee can see same. Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work, or danger to person or property in violation of any applicable statute or court order or in violation of any government regulation relating to safety of person or equipment. Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident. The employee and the Union, upon request, shall receive a copy of the accident report that the employee submits to the Employer. Employees shall immediately, or at the end of their shift, report all defects of equipment. Such reports shall be made on a suitable form furnished by the Employer and shall be made in multiple copies, of which one copy is to be given to the employee and a copy to the Union. The Employer cannot require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by a qualified mechanic, with a copy of the mechanic's report sent to the Union.

6. Trucks must have a heater, defroster and windows that are in good working condition. No employee may be required to use a truck without a working heater when outside temperature is below 40 degrees Fahrenheit. In making this determination, wind chill shall not be considered.

7. Garages or terminals of the Employer must provide sanitary conditions for the employees covered by this Agreement.

F. Labor Practice.

1. The Employer shall not enter into any other written or oral agreement with any employee or group of employees covered by this Agreement, which in any way violates the wages, hours, or working conditions of this Agreement.

2. The Local Union shall have the right to seek recovery from the Employer in its own name and in behalf of the employee in the amount of wages or other benefits which any member may waive or assign to the Employer.

3. The Union as well as the members thereof agree at all times, as fully as it may be within their power, to further the interests of the industry and the Employer and to cooperate with the Employer to the best of its ability to eliminate unfair trade practices and labor abuses detrimental to the industry.

F. Side Letters

The parties hereby incorporate the following side letters into this Agreement: Attendance/Lateness Call-In (dated February 8, 2005), Dress Code (dated November 9, 2005), and Wage Payment (dated January 27, 2006). Copies of those side letters are contained in Appendix "D" to this Agreement.

G. PTO Grants

The Company and the Union agree to meet and discuss the movement of all PTO grants (i.e., sick, vacation, and floaters) to a common date. The parties agree to meet during 2010 to ensure that the pro-ration and other issues related to conforming that common date are completed by 1/1/2011. Further, the parties agree that no employees will lose any time as a result of the conversion.

H. DECAP

1. Employees who have been employed with the Company for sixty (60) days or more, may enroll in the Dependent Care Account Plan, if such plan is established and maintained by the Company, and subject to IRS regulations.

I. DHL Tuition Reimbursement Program

The Employer shall allow all unit employees to participate in the Employer's tuition reimbursement program only to the extent it maintains such program for non-unit employees.

J. Time Clocks

The Employer, regardless of the number of employees employed must provide a time clock or comparable time recording device. Employees shall not be required to punch in or out at any other time during their work day other than the employees alone punching in at the beginning of their shift and punching out when their shift ends, and before and after their assigned meal break. On a Monday or, as applicable a Tuesday, individual employees shall, upon request, be provided with a receipt accurately showing their hours (including actual punch/swipe-in and punch/swipe-out times) worked at the end of the preceding payroll week.

K. IBT Button/Pin

A unit employee may wear up to but not in excess of any one (1) of three (3) authorized IBT pins pictured herein in Appendix "B". Such button/pin, if worn, must be attached on the employee's

shirt, sweater, vest or jacket on the chest area opposite the DHL logo. Under no circumstances, may the button/pin be worn on the hat.

L. When checks are issued in payment of wages, such checks shall have appended memoranda, for detachment and retention by the payee, separately showing regular and overtime earnings and showing deductions for social security, state and federal income tax withholdings, and any miscellaneous deductions. The Employer shall distribute paychecks to employees in sealed envelopes. To the extent permitted by applicable state law, all newly hired employees must participate in the Employer's direct deposit or Paycard programs.

M. Payroll records of the Employer shall reflect accurately and fully normal and overtime hours worked and wages paid, as well as vacations earned and given, and holidays worked or not worked.

N. Business agents, stewards and other authorized representatives of the Union shall be granted access to wage and time records and relevant personnel records of employees covered by this Agreement upon request to a management representative.

O. Employees shall not be held responsible for vehicles or equipment not properly equipped to comply with State Motor Vehicle Laws or Port Authority Rules and Regulations and shall be compensated for fines and time lost if summoned to court, etc., because of same.

Employees shall report (both pre-trip as well as post-trip) any and all defects to their assigned vehicle to their immediate supervisor.

P. No employee shall double park, park in bus stops, park by hydrants or park in restricted zones or violate any law or ordinance in order to make deliveries or pick-ups, unless so ordered by the Employer. However, employees must make an honest effort to perform their duties.

Q. Any employee required to appear in a court proceeding in connection with a work related matter at the request of the Employer or at the summons of any governmental agency, shall be paid in full for such time by the Employer.

R. When an employee is required to appear in court for the purpose of testifying because of an accident he may have been involved in during working hours, such employee shall be reimbursed in full for all time lost unless the employee is proven to have been under the influence of intoxicating liquors or narcotics.

S. Teamsters' 401(k) Plan

The Employer agrees to allow all unit employees to participate in the Teamsters' 401(k) Plan.

T. Protection of Rights

1. It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if any employee refuses to perform any service which his Employer undertakes to perform as an ally of an Employer or person whose employees are on strike, and which service, but for such strikes, would be performed by the employees of the Employer, a person on strike.

2. No employee covered by this Agreement can be subjected to a polygraph test.

U. DRIVE

The Employer agrees to deduct from the paycheck of all employees covered by this Agreement voluntary contributions to DRIVE. DRIVE shall notify the Employer of the amounts designated by each contributing employee that are to be deducted from his paycheck on a weekly

basis for all weeks worked. The phrase "weeks worked" excludes any week other than a week in which the employee earned a wage. The Employer shall transmit to DRIVE National Headquarters on a monthly basis, in one (1) check, the total amount deducted along with the name of each employee on whose behalf a deduction is made, the employee's social security number and the amount deducted from that employee's paycheck. The International Brotherhood of Teamsters shall reimburse the Employer annually for the Employer's actual cost for the expenses incurred in administering the weekly payroll deduction plan.

The Employer will recognize authorization for deductions from wages, if in compliance with state law, to be transmitted to the Local Union or to such other organizations as the Union may request if mutually agreed to. No such authorization shall be recognized if in violation of state or federal law. No deduction shall be made which is prohibited by applicable law.

ARTICLE XXVIII. TRANSFER OF EMPLOYER TITLE AND INTEREST

This Agreement shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation or any part thereof is sold, leased, transferred, or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceeding, such operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof. The Employer shall give notice of the existence of the Agreement to any purchaser, transferee, lessee, assignee, etc. of the operation covered by this Agreement or any part thereof, including rights only. Such notice shall be in writing with a copy to the Union, at the time seller, transferor, or lesser executes a contract or transaction as herein described. The Union shall also be advised of the exact nature of the transaction and reserves the right to veto any of the above named transactions if any of the above named procedures are not adhered to by the Employer.

ARTICLE XXIX. SEPARABILITY (SAVINGS CLAUSE)

In the event any Article of this Agreement or section/paragraph thereof shall, at any time, be declared invalid by final adjudication of a State or Federal court or administrative agency or legislative enactment, such decision or legislative enactment shall not invalidate the entire Agreement. All other provisions not declared invalid shall remain in full force and effect. In the event any provision is declared unlawful or invalid, the parties hereto shall meet solely for the purpose of negotiating with respect to the matters which may have been declared so invalid or void. Such negotiations, however, shall not relieve either of the parties of their responsibilities and obligations under Article VII (No Strike-No Lockout) during the life of this Agreement. Moreover, any and all disputes between the parties regarding a substitute provision shall not be subject to Article XI (Grievance and Arbitration). Accordingly, no substitute provision shall be implemented during the term of this Agreement absent the mutual agreement of the parties.

ARTICLE XXX. SCOPE OF BARGAINING

The Employer and the Union acknowledge that during the negotiations which resulted in this Agreement, each party had and exercised the unlimited right and opportunity to make demands and proposals with respect to any and all lawful and proper subjects of collective bargaining. This Agreement fully and completely incorporates all such understandings and agreements between the parties and supersedes all prior agreements, understandings and past practices, oral or written, express or implied. Accordingly, this Agreement alone shall govern the entire relationship between the parties and shall be the sole source of any and all rights which may be asserted in arbitration hereunder or otherwise.

By reason of the foregoing, the Employer and the Union, for the duration of this Agreement, voluntarily and unqualifiedly waive any and all rights to negotiate, discuss or bargain collectively with respect to any and all matters referred to or covered in this Agreement or with respect to any

subject or matter not specifically referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or executed this Agreement.

Nothing herein contained shall preclude both parties hereto from mutually agreeing to modify or alter the terms and conditions of this Agreement during its term, provided of course, the decision to do so was mutually and/or jointly made by the Employer and the Union.

ARTICLE XXXI. DURATION

This Agreement shall be effective December 15, 2009 (ratification date), and shall continue in full force and effect, without reopening of any kind as expressly provided herein, to and including twelve midnight on February 28, 2014.

Either party desiring to modify, change, or terminate this Agreement shall notify the other, in writing, at least sixty (60) calendar days prior to the expiration date of this Agreement. Should the parties fail to reach an agreement on proposed modifications by the expiration date, this Agreement shall terminate, unless extended in writing by the mutual consent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this
____ day of February, 2010.

DHL EXPRESS (USA), INC.

LOCAL 295, I.B.T.

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

APPENDIX "A"

JOB CLASSIFICATIONS AND DESCRIPTIONS*

Effective ratification of this Agreement, the following departments will be abolished and the following job classifications will be consolidated as follows.

- A. The Finance Clerk, Supply Clerk, Import Clerk, and Import Courier Agent job classifications will now be referred to as Clearance Clerks.
- B. The Import Service Agent, Export Service Agent, and CSR job classifications will now be referred to as Clearance Agents.
- C. The Sr. Import Service Agent will now be referred to as Sr. Clearance Agent.

The following job descriptions, which are for job classifications which have been abolished and consolidated as described above, shall remain in this Agreement solely for the reference of the parties on guidance for the aforementioned new job classifications.

I. EXPORT DEPARTMENT

A. Required Job Duties – Export Service Agent.

The Export Service Agent may be required to:

1. Perform any and all duties within the job description of the CSR classification of the Import Department as provided herein at III B.(i);
2. Data enter information (including but not limited to name and address of shipper and consignee, specific description of merchandise, quantity, weight and value thereof, origin and destination codes etc.) from documents or images and/or from any DHL Gateway queue, (including but not limited to House Airwaybills (HAWB), Shipper Export Declarations (SED) and Export

Licenses, etc.) into the Export Control Handling Operation (ECHO) or comparable computer system, and/or as may be applicable for SED shipments, into the Automatic Export System (AES) or comparable export system, maintained by the U.S. Government, or for compliance specialty shipments (i.e., 22CFRs, Department of State, carnets, etc.) into the AES/PC link, and confirm the accuracy of all such entries;

***All currently employed unit employees as of the ratification date of the predecessor Agreement, for as long as they remain in the unit shall be deemed to have fulfilled and fully satisfied the "minimum" typing words per minute requirements set forth in the "Minimum Qualification" requirements for each unit classification for all purposes (including transfers, promotions and/or bumping).**

3. Perform additional data entry and research and reconciliation functions in connection with inbound shipments (i.e., reconcile manifest with applicable 7512; attach 7512 to manifest; research Echo and Impex for information and contact gateways for missing 7512s;
4. Prepare flight folders for destination flight; close, print and transmit manifest to destination location or gateway and place copies thereof in flight folder; assist Operations Agents, as needed, in allocating and reallocating shipments delivered to JFK gateway via airline or truck for placement on International Export flight;
5. Recognize SED required shipments, verify accuracy of SED information (including, but not limited to classifications, license symbols and meanings, and weight conversion);
6. Print and review SED summary for any unscanned shipments on flight closings; scan SEDs to proper flight; ensure SEDs are checked for outbound scan;
7. Research and process all SED and compliance shipments;
8. Perform imaging process, as necessary, including creating batches (regular, SED or C/O), image scanning paperwork and completing exceptions process;
9. Research and trace export shipments to determine status, as requested, and search for and/or process hold or problem shipments within the office and/or warehouse, as needed;

10. Prepare required paperwork forms, documentation to be delivered to airlines, brokers, U.S. Customs and other governmental agencies;
11. Prepare documentation for legalization, as needed (i.e., submission of paperwork to consulate of designated countries for approval prior to delivery of shipment);
12. Process oversize shipments for delivery by commercial flight and communicate with airlines for the fastest transit thereof;
13. Prepare certificates of origin in PC or typewriter;
14. Communicate with System Support and report any computer system problems/malfunctions etc.;
15. Print ECHO or comparable system reports (including but not limited to SED edit/audit, AES Summary, AES transmission status HAWB detail, edit and reconciliation, transfer flight status, manual allocation, handling unit report tool, transmission confirmation and manifest operations past due reports) and various other departmental reports (including but not limited to Manual Entry and Export Hours/Transmission Percentage Report, and take appropriate action thereon;
16. Use email, e-fax, fax, scanners, copy machine, telephone, computers and typewriters and/or other comparable system or equipment in performing job duties;
17. Prepare accessorial charge log in PC or manually; and
18. Perform other related duties as directed by supervision.

B. Minimum Qualifications for Entrance into the Export Service Agent Classification.

Prior to attaining the classification and pay rate of Export Service Agent, the employee shall be required to take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating ability: (i) to operate various pieces of office equipment, including but not limited to: computer screen, keyboard, mouse, ten-key calculator, scanners, copier and fax machine; (ii) to type proficiently in excess of forty (40) words per minute; and (iii) to communicate orally and in writing, in English, in a clear and intelligent manner.

II. FINANCE/ADMINISTRATIVE DEPARTMENT

A.(i) Required Job Duties – Finance Clerk.

The Finance Clerk may be required to:

1. Review vendor invoices, as assigned, as well as internal DHL charges from other DHL stations for accuracy and stamp applicable general ledger and cost center codes thereon;
2. Communicate with applicable vendor or DHL station for explanation of questionable invoices and/or charges, and take appropriate action thereon (i.e., leave as is, or reduce as appropriate);
3. Prepare transmittal for Billing Center, including the data entering of all relevant information listed on an invoice (i.e., date, number, vendor name, amount, etc.);
4. Review Master Airway Bill (MAWB) from commercial airlines and apply applicable discount to same;
5. Data enter inbound/outbound commercial flight data (i.e. airline, weight, cost, etc.) and print up report (i.e., FLITES or comparable reports) for all such entries;

6. Edit FLITES and comparable reports for accuracy prior to submission to the corporate office;
7. Prepare various reports on behalf of Purchased Air Manager based upon previously data entered FLITES or comparable information, as requested;
8. Prepare checks from Imprest account as requested by Import Department for submission to applicable governmental agency for services performed;
9. Pay monies from petty cash account to Operations personnel, as requested, for submission to commercial airlines in payment for recovery of material and paperwork;
10. Data enter all information listed on Employee Data Communication (EDC) sheets or on comparable systems for all employees in the JFK gateway (i.e., work activity codes, break and/or meal periods, amount of pieces handled and times associated therewith), and print out Daily Operations Report (DOR) or comparable reports, as requested;
11. Data enter truck shuttle information data provided by Control Center;
12. Troubleshoot software problems;
13. Research all commercial airline overage charges as reflected on Return for Amendment (RFA) from corporate office by reviewing all applicable Master Airwaybills (MAWBs);
14. Routinely file container pick up and returns receipts from commercial airlines and review same to resolve any financial discrepancies asserted by such airlines;

15. Communicate with other departments regarding flight information;
16. Communicate with Billing Center personnel regarding accounts payable issues;
17. Verify and adjust Flight Logs provided by Control Center;
18. Perform receptionist-type duties (i.e., answer all incoming calls to Gateway and transfer same to proper extension, greet all visitors and notify individual with whom the visit is scheduled, maintain and file copies of applications for employment, routine typing, communicate with telephone vendor regarding malfunctions/repairs to telephone system and log all work performed);
19. Use computers, e-mail, e-fax, fax, typewriters, copy machine, calculators, telephones and/or any other comparable system or equipment, in the performance of work duties;
20. Perform duties within the job description of the Supply Clerk classification of the Finance/Administrative Department as provided herein at II B.(i); and
21. Perform other related duties as directed by supervision.

(ii) **Minimum Qualifications for Entrance into the Finance Clerk Classification.**

Prior to attaining the classification and pay rate of Finance Clerk, the employee shall be required to take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating ability: (i) to operate various pieces of office equipment, including but not limited to computer screen, keyboard, mouse, ten-key calculator, copier, fax machine; (ii) to type proficiently in excess of forty (40) words per minute and accurately tabulate and calculate numerical information; and (iii) to communicate orally and in writing, in English, in a clear and intelligent manner.

B.(i) **Required Job Duties – Supply Clerk.**

The Supply Clerk may be required to:

1. Perform any and all duties within the job description of the Finance Clerk classification as provided in II A.(i) herein;
2. Use fork lift in loading and unloading supplies from trucks, stack, open and/or store supplies in facility and distribute same to applicable departmental personnel;
3. Order various supplies, including employee boots and uniforms, for the Gateway, as requested or needed, within fixed budgetary limitations, and pay for same via procurement card, or arrange for submission of vendor invoice in accord with published Company guidelines and directives;
4. Maintain accurate inventory records of operations' tags, tapes and import forms;
5. Prepare weekly report of all supply purchases and expenditures for same;
6. Prepare and update computer data base of capital assets in Gateway;
7. Negotiate costs, within communicated guidelines and under supervision, with vendors;
8. Maintain receipts for all credit card purchases, attach same to monthly procurement and statements, and submit to Finance/Administrative Department management;
9. Use computers, e-mail, fax, copy machine, telephone, calculator and/or other comparable system or equipment in performance of job duties; and
10. Perform other related duties as directed by supervision.

(ii) **Minimum Qualifications for Entrance into Supply Clerk Classification.**

Prior to attaining the classification and pay rate of Supply Clerk, the employee shall be required to:

1. Have a valid driver's license; and
2. Take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating ability: (i) to safely and efficiently operate a fork lift and load and unload supplies and store same; (ii) to operate various pieces of office equipment, including but not limited to: computer, email, fax, copier, ten-key calculator; (iii) to type proficiently in excess of twenty-five (25) words per minute, and accurately tabulate numerical information; and (iv) to communicate orally and in writing, in English, in a clear and intelligent manner.

III. **IMPORT DEPARTMENT**

A.(i) **Required Job Duties – Import Clerk.**

The Import Clerk may be required to:

1. Retrieve and review import paperwork and update HAWB data in computer or print same, as required;
2. Prepare entry folders;
3. Print entry documents (i.e., manifests, HAWBS, customs forms, etc.) and assemble same into applicable entry jackets;
4. Print, review and take appropriate action, as required, in connection with various import related reports, such as hold sheets, flight reports, flight logs, transmission reports, broker turnover and AMS reports, etc.;

5. Stage entry folders for appropriate follow-up action (i.e., entry submission to customs, or filing or management review);
6. Notify applicable department about missing paperwork, prepare logs in connection therewith, obtain copies of all such missing documentation and place in applicable folders;
7. Update import processing system shipment history and external customer data base each and every time an action is performed on a HAWB;
8. Perform matching and clearance verification in preparation for billing and/or file retention, as follows:
 - (a) collect entry jackets placed in clerical baskets by Import Service Agents;
 - (b) review jackets to ensure that all necessary paperwork and forms are contained therein (i.e., HAWB, invoice, applicable custom forms, such as 7501 and 3461 etc.);
 - (c) print customs release form or, as may be applicable, receive hard copy thereof and place in jacket;
 - (d) change payment due date if and as necessary;
 - (e) identify and segregate all separate entry files with duty charges of less than \$1.00 (and/or any other different dollar amount as determined solely by the Employer in the future); for all such files involving customs form 7501, mail copies of contents of file to customer and send file to file room; for all such files involving custom forms other than 7501, simply send to file room.

9. Perform billing on all files with duty charges of \$1.00 or more (and/or any other different dollar amount as determined solely by the Employer in the future), as follows:
 - (a) access billing screen and post (i.e., enter) file numbers on all assigned files and review to ensure all required billing data is listed; if not, retrieve such data and update screen;
 - (b) mail copy of file to NBC for billing and forward original file to file room;
 - (c) remit payment to U.S. Customs by check or electronically for all customs duties on imported shipments.
10. Maintain, store and retrieve files and process paperwork in connection therewith;
11. Use communication systems (i.e., computer, email, e-fax, fax, telephone, copiers, printers, etc.) and/or any other comparable system or equipment in the performance of job duties; and
12. Perform additional related duties and otherwise provide assistance to other unit employees in the performance of their duties, as assigned by supervision.

(ii) **Minimum Qualifications for Entrance Into the Import Clerk Classification.**

Prior to attaining the classification and pay rate of Import Clerk, the employee shall be required to take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating ability: (i) to operate various pieces of office equipment, including but not limited to: computer screen, keyboard, mouse, ten-key calculator, scanners, copier and fax machine; (ii) to type

proficiently in excess of forty (40) words per minute, and (iii) to communicate orally and in writing, in English, in a clear and intelligent manner.

B.(i) Required Job Duties – Customer Service Representative (CSR).

The CSR may be required to:

1. Communicate with customers, outside brokers, airlines, DHL stations and/or other departments within the JFK gateway, U.S. customs and other governmental agencies regarding status or confirmation of shipments held by U.S. Customs or other applicable governmental agencies, and enter all such communications into the Impex computer system;
2. Provide appropriate forms to customers regarding held shipments, and prepare transmittal documentation in connection therewith;
3. Review completed forms returned by customers, determine accuracy and completion, and provide copies thereof to Import Department management/supervision;
4. Retrieve voice mails and/or emails from any and all computers or phones within the Import Department as soon as possible, as directed, at least once each hourly time frame following the commencement of the employee's shift;
5. Fill in productivity log on a daily basis (i.e., listing of all Airway bills on which CSR has been assigned to complete).
6. Prepare and copy forms required by U.S. Customs, other applicable governmental agencies and/or by DHL;
7. Routinely file forms and documents;

8. Stage all pending files, containing airway bills, invoices and additional documentation, on which CSR has been assigned but has not yet completed for next day and/or, as may be applicable, weekend follow-up;
9. Schedule and coordinate appointments with Importer or outside vendor to come to JFK Gateway, remove contents from their shipment(s) and mark same in accordance with U.S. Customs requirements;
10. Coordinate appointments with outside governmental agency inspectors and JFK Gateway security personnel to facilitate inspection of on hold shipments;
11. Create client master file in computer for all new customers, listing account name, address, telephone number, contact name, tax ID number, power of attorney, etc. and/or amend existing files with updated information;
12. Input/update Lasernet or comparable systems into two (2) separate program screens for miscodes and/or update all missing field information;
13. Coordinate special handling for immediate delivery of shipment (i.e., perishables, medical necessity, photo-shoot and the like);
14. Complete weekly Service Delay Advisories of Special Accounts (i.e., Hewlett Packard, Becton Dickinson, Agilent etc.);
15. Research (i.e., "tracing" via Impex, Laser computer screens or comparable systems) in effort to determine reason for failure and/or refusal of U.S. Customs to clear shipment for delivery, and update shipment history (i.e., data enter all work performed in connection with and results of tracing);
16. Request assistance from Operations Department in locating missing original paperwork (i.e., Visas, Carnets, permits, etc.) and/or direct Operations

Department personnel to change customer address, hold for pick-up or set-up same day shipment;

17. Advise origin station regarding missing original paperwork which could not be located by Operations Department personnel;
18. Monitor pre-alerts from origin station for "hot" shipment(s) and/or special accounts, and advise origin station of status (i.e., delivered, held, missing, etc.
19. Notify field service personnel to stop and/or retrieve shipments improperly sent for delivery without appropriate customs authorization;
20. Reconstruct missing and/or defective file folders to include all required documentation, and resubmit same to U.S. Customs for release and final movement of shipment;
21. Perform duties within the job description of the Import Clerk classification, as provided herein at III A.(i), as directed by supervision;
22. Use telephone, communication systems (i.e., computer, email, e-fax, copier, printers etc.) and/or any other comparable system or equipment in the performance of job duties; and
23. Perform additional related customer service duties, as directed by supervision.

(ii) **Minimum Qualifications for Entrance into the CSR Classification.**

Prior to attaining the classification and pay rate of CSR, the employee shall be required to:

1. Have at least one (1) year previous work experience in customer service duties, preferably in the airfreight industry or, in lieu thereof, be employed as an Import Clerk, or Export Service Agent, for at least six (6) months; and
2. Take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating ability: (i) to operate various pieces of office equipment, including but not limited to: computer screen, keyboard, mouse, ten-key calculator, scanners, copier and fax machine; (ii) to type proficiently in excess of forty (40) words per minute; and (iii) to communicate orally and in writing, in English, in a clear and intelligent manner.

C.(i) Required Job Duties – Import Service Agent.

The Import Service Agent may be required to:

1. Perform any and all duties within the job descriptions of the Import Clerk and/or CSR classification, as provided herein at III A.(i) and B.(i) above;
2. Determine and rate, in the exercise of independent judgment and discretion, the appropriate customs tariff classification based on country of origin, value and description for each assigned HAWB in strict compliance with the classifications listed in U.S. Customs Tariff Regulations and, if applicable, in accordance with Customer Master Instructions;
3. Flag (i.e., enter tariff classification and applicable customs entry designation such as, consolidated informals, inbonds, formals, single informals, broker turnover, etc.) into computer, and complete data entry processing in connection therewith or, as may be applicable, prepare manual entry

documentation and transmit same (electronically and, if required, hard copy) to U.S. Customs and other applicable governmental agencies; and

4. Perform other related duties, as directed by supervision.

(ii) **Minimum Qualifications for entrance into the Import Service Agent Classification.**

Prior to attaining the classification and pay rate of Import Service Agent, the employee shall be required to take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating ability: (i) to operate various pieces of office equipment, including but not limited to: computer screen, keyboard, mouse, ten-key calculator, scanners, copier and fax machine; (ii) to type proficiently in excess of forty (40) words per minute, and (iii) to communicate orally and in writing, in English, in a clear and intelligent manner.

D.(i) **Required Job Duties – Senior Import Service Agent.**

The Senior Import Service Agent may be required to:

1. Perform any and all duties within the job descriptions of the Import Clerk, CSR, and Import Service Agent classifications as provided in III. A.(i), B.(i) and C.(i) above;
2. Data enter, in the exercise of independent judgment and discretion, all required information into computer, and complete all required additional documentation in connection with all assigned HAWBs that are subject to regulation by the Food and Drug Administration (FDA), or Fish and Wildlife Service (FWS), or Department of Defense (DOD), or Government Contracts, Offnet Desk in strict compliance with all such governmental regulations;
3. Data enter, in the exercise of independent judgment and discretion, all required information into computer, and complete all required additional

documentation required by U.S. Customs for all assigned HAWBS in connection with anti-dumping/countervailing duty (ADD), temporary import bond (TIB) and manipulations requirements in strict compliance with Customs regulations;

4. Perform post entry functions required by U.S. Customs (i.e., entry corrections and/or additions etc.) in connection with Deletions, Non-Stratified entries, seizures, etc.; and
5. Perform other related duties, as directed by supervision.

(ii) **Minimum Qualifications for Entrance into the Senior Import Service Agent Classification.**

Prior to attaining the classification and pay rate of Senior Import Service Agent , the employee shall be required to:

1. Have at least one (1) year previous work experience in Customs, FDA, FWS, DOD, or Government Contracts, Offnet Desk import procedures, preferably in the airfreight industry, or, in lieu thereof, be employed for one (1) or more years as an Import Service Agent 1 within the unit covered by this Agreement;
2. Take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating ability: (i) to operate various pieces of office equipment, including but not limited to: computer screen, keyboard, mouse, ten-key calculator, scanners, copier and fax machine; (ii) to type proficiently in excess of forty (40) words per minute, and (iii) to communicate orally and in writing, in English, in a clear and intelligent manner; and

3. Receive a certificate from an accredited school or teaching institution, attesting that he/she satisfactorily completed a course on Import Regulations and Documentation or, in lieu thereof, take and satisfactorily pass written and practical tests prepared and administered by the Employer demonstrating a thorough understanding and familiarization with (i) FDA, FWS, DOD regulations as well as (ii) Customs tariff classifications and entry designations, and (iii) U.S. Customs requirements in connection with ADD, TIB and manipulations.

E.(i) **Required Job Duties – Import Courier Agent.**

The Import Courier Agent may be required to:

1. Perform any and all duties within the job descriptions of Import Clerk and CSR classifications, as provided in III A.(i) and B.(i) above;
2. Drive a Company vehicle in the performance of work duties;
3. Transport entry paperwork and packages to onsite and offsite U.S. Customs, FDA, F&WS, USDA, USPHS and other government regulatory agencies, as required;
4. Pull freight from warehouse and stage for U.S. Customs and other governmental regulatory agency examinations;
5. Work directly with onsite and offsite U.S. Customs and other governmental agency personnel to effect the release of shipments;
6. Pick up and drop off documents at air carrier, freight forwarder, broker, and other industry related facilities;
7. Communicate with all governmental regulatory agencies;

8. Schedule and attend appointments with regulatory agencies as appropriate;
9. Deliver payment of duties and fees to regulatory agencies as appropriate;
10. Return released and/or rejected entry paperwork to Control Center sub-department of the Operations Department (i.e., GCG) and/or Import management for further processing; and
11. Perform other related duties, as assigned by supervision.

(ii) **Minimum Qualifications for Entrance into the Import Courier Agent Classification.**

Prior to attaining the classification and pay rate of Import Courier Agent, the employee shall be required to:

1. Have a valid driver's license and Port Authority badge; and
2. Take and satisfactorily pass practical tests prepared and administered by the Employer demonstrating the ability: (i) to drive an employer vehicle in a safe, efficient and competent manner; (ii) to operate various pieces of office equipment, including but not limited to: computer screen, keyboard, mouse, ten-key calculator, scanners, copier and fax machine; (iii) to type proficiently in excess of twenty-five (25) words per minute; and (iv) to communicate orally and in writing, in English, in a clear and intelligent manner.

APPENDIX "B"

IBT LAPEL PIN

APPENDIX "C"

**DHL SUBSTANCE ABUSE
POLICIES AND PROCEDURES**

[C-TPAT COMPLIANT TESTING TO BE PROVIDED]

APPENDIX "D"

SIDE LETTERS

EXHIBIT 4

[Page 1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Index No. 13-cv-01471 (RJD) (JO)

DIONNE MARSHALL and LUCIA GOMEZ,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

-vs-

DEUTSCHE POST DHL and DHL EXPRESS
(USA) INC.,

Defendants.

DEPOSITION OF ALBERT CAMERA

Volume I of I

April 17, 2014

1:03 p.m - 3:31 p.m.

200 South Biscayne Boulevard, Suite 3400

Miami, FL 33131

Stenographically Reported by
Paul Cunningham, FPR
Florida Professional Reporter

[Page 2]

1 APPEARANCES:

2

On behalf of the Plaintiffs

3

McLAUGHLIN & STERN, LLP

BY: LEE SHALOV, ESQUIRE

4

260 Madison Avenue

New York, NY 10016

5

6

On behalf of the Defendants

DUANE MORRIS, LLP

7

BY: KEVIN VANCE, ESQUIRE

200 S. Biscayne Boulevard, Suite 3400

8

Miami, FL 33131

9

10

11

I N D E X

12

Witness

Direct

Cross

13

Albert Camera

3

14

- - - - -

15

16

Exhibits Marked for I.D.

17

Page #

18

No. 1 Composite docs.

62

19

No. 2 Time detail docs.

62

20

No. 3 Manager's Guide

85

21

No. 4 Collective Bargain Agreement

86

22

No. 5 Composite Documents

86

23

24

25

[Page 34]

1 A. If we have a hefty amount of flights or if
2 another agent will be out and they are covering for
3 that agent.

4 Q. How do you communicate to these people to come
5 in early?

6 A. Verbally or via e-mail.

7 Q. How about the occasions when you have not
8 requested somebody to come in early, have you seen
9 people come in before their shifts are scheduled to
10 begin?

11 A. Yes.

12 Q. Have you seen people come in say 15 to
13 20 minutes early on the occasions when you have not
14 asked them to come in early?

15 A. Yes.

16 Q. Your testimony is, so I understand it, on
17 those occasions, these people never begin actually
18 working until their shifts begin?

19 A. Yes.

20 Q. What do they do? What have you observed them
21 do?

22 A. They get coffee. They take care of personal
23 matters.

24 Q. Anything else?

25 A. Chat.

[Page 35]

1 Q. Anything else you have seen them do before
2 their shifts begin?

3 A. Go to the lunchroom.

4 Q. Is there a way for DHL to tell from when
5 somebody logs into a computer, what time that login
6 occurred?

7 A. I don't know.

8 Q. When somebody begins their shift, do they have
9 to log into a computer?

10 A. Yes.

11 Q. Do they put in a code of some kind?

12 A. A password, yes.

13 Q. Does each person have their own separate
14 password?

15 A. Yes.

16 Q. Has that policy been in place for all of the
17 time you have been there?

18 A. Yes.

19 Q. Do the agents actually have to turn the
20 machine on or is it already on when their shifts begin?

21 A. It's already on.

22 Q. But is it correct that the person can't start
23 inputting information until he or she has entered the
24 password?

25 A. Correct.

[Page 39]

1 For example -- can I give one?

2 Q. Yes.

3 A. For example, union contract dictates any
4 missed punch is a tardy. There is employees that worry
5 that they might miss a punch. So that window is there
6 to be able to make sure that a punch is registered and
7 you don't miss a punch that's counted as late.

8 Q. Forgive me. I am not following the purpose in
9 your mind what the adjustment is for, but I guess that
10 is a question for another day.

11 So is there a way for an employee to alert DHL
12 that he or she was working before punch-in and should
13 get paid for that work?

14 A. Yes.

15 Q. What's the employee supposed to do?

16 A. They can go to their supervisor or come to
17 myself and let us know.

18 Q. Has that ever happened?

19 A. We don't encourage it. We don't encourage it,
20 unless we asked them to come in and work early.

21 Has it ever happened? Not that I have been
22 made aware of.

23 Q. In all of the years you have been there, an
24 employee or supervisor has never come to you and said,
25 in words or substance, I came in 15 minutes before my

[Page 43]

1 Q. Is there also a 30-minute deduction for lunch?

2 A. Yes.

3 Q. Do employees know about that as well?

4 A. Yes.

5 Q. How do they know that?

6 A. I'm sorry. In Miami we have a unique
7 situation because we allow them to combine the two
8 15-minutes and their lunch to secure them an hour, per
9 the collective bargaining agreement that is in place,
10 but they are aware.

11 Q. What I am asking is, if employees specifically
12 know that their pay is going to have a half hour
13 deduction for lunch?

14 A. Yes.

15 Q. How do they know that? Do you remember a
16 document, an e-mail, a memo?

17 A. They see it on their paychecks.

18 Q. Do employees have to clock out when they leave
19 for lunch?

20 A. Yes.

21 Q. Do they have to clock in when they return?

22 A. Yes.

23 Q. So, hypothetically, if an employee takes only
24 a 25-minute lunch and goes to the computer and starts
25 working after the 25-minute period, he or she wouldn't

[Page 64]

1 around the department, and I wanted to bring it up to
2 everyone's attention.

3 Q. Now, the first bullet point you say, quote,
4 your schedule starts when you clock in, close quote.
5 Do you see that?

6 A. Yes.

7 Q. Before you told me the schedule starts when
8 the shift begins. Is that different?

9 MR. VANCE: Object to form.

10 THE WITNESS: I'm sorry. I know that seems
11 vague. If you read on, basically, what I was
12 witnessing is individuals punching in and taking 15
13 or 20 minutes doing what they were supposed to do
14 during a grace period on company time.

15 BY MR. SHALOV:

16 Q. What is a grace period?

17 A. An adjustment period, if you want to come in
18 early to get your coffee and do your personal things,
19 they were doing it on company time.

20 Q. Help me out here, if you can. Is this
21 behavior that you are referencing here behavior after
22 the shift of these employees started?

23 A. Yes.

24 Q. So you would see people doing these things,
25 like making coffee, for example, or eating breakfast,

[Page 65]

1 after their shifts begin? Is that what you're saying?

2 A. After their shifts began.

3 Q. Not before they clocked in and the shifts
4 began, right?

5 A. No, I wouldn't have a problem with that. The
6 reason I stated that your schedule starts when you
7 clock in, my experience in Miami with my agents, they
8 clock in two minutes, or right on that time of their
9 schedule.

10 Q. So your testimony, I think, was or is that
11 your agents begin working -- strike that.

12 The agents clock in only minutes before their
13 shifts are scheduled to begin? I don't want to put
14 words in your mouth? Is that what I hear you saying?

15 MR. VANCE: Objection.

16 THE WITNESS: I can't generalize. I can't
17 speak to every single agent, but I would say
18 somewhere around the 15 minutes, very close to the
19 beginning of their scheduled shift.

20 BY MR. SHALOV:

21 Q. Are we talking a minor -- are we talking
22 15 minutes?

23 A. It could be 15 minutes at times.

24 Q. Okay.

25 A. But generally within five to ten minutes if I

[Page 66]

1 have to give a number.

2 BY MR. SHALOV:

3 Q. Let's look at some pay records and I want to
4 ask you some questions about it.

5 MR. SHALOV: Let's mark this as Camera
6 Exhibit 2.

7 (Thereupon, the document was marked for I.D.)

8 BY MR. SHALOV:

9 Q. This looks like the time detail for Miami
10 agent, and it bears Bates Numbers 3424 through 3504.
11 Do you see this?

12 A. Yes.

13 Q. Can you just describe this for the record,
14 Mr. Camera?

15 MR. VANCE: It's 3424, 3462 and 3504.

16 BY MR. SHALOV:

17 Q. Mr. Vance pointed out to me that these are not
18 sequential. The Bates Numbers are 3424, 3462 and 3504,
19 they are attached as a single document.

20 Can you identify these pages, Mr. Camera?

21 A. Can you repeat?

22 Q. Can you identify the pages, what we're looking
23 at?

24 A. We are looking at pages 3424, 3462 and 3504.

25 Q. I'm asking the type of document, not the Bates

[Page 75]

1 A. There must have been something going on with
2 the overtime usage. This was when I was a supervisor.
3 I'm copying the managers at that point.

4 Q. Who was your immediate supervisor at the time?

5 A. Mario Hoe that you see on the cc line.

6 Q. Okay. Mario H-O-E, he's no longer there?

7 A. No.

8 Q. You write: All overtime must be approved by a
9 supervisor or manager?

10 A. Yes.

11 Q. No coming in early. And you have the no in
12 capitals, right?

13 A. Yes.

14 Q. Why did you put the no in capitals?

15 A. For punch.

16 Q. Were you trying to emphasize you didn't want
17 people coming in early?

18 A. Without approval, yes.

19 Q. During this period of time, you saw people
20 coming in before their shifts?

21 A. Don't come in early to work for overtime
22 purposes, not for overtime purposes, not to prepare
23 yourself for your shift.

24 Q. I want to confirm the reason you wrote this is
25 because you were obviously seeing people coming in

1 early to work?

2 A. I can't remember exactly if that was the
3 reason.

4 Q. Why else would you write that?

5 A. I don't want to be complicated, but being that
6 the overtime is by seniority, there's times that the
7 steward will come to me because an agent might have
8 come to them, I saw this person come in early, I have
9 seniority over them. I want to make sure that we are
10 following that seniority rules.

11 So that was so long ago, I don't remember
12 exactly what triggered this e-mail.

13 Q. Is it fair to say, based on your reading of
14 this today, you had been observing people coming in
15 before their shifts to work?

16 MR. VANCE: Objection to form.

17 THE WITNESS: It's hard for me to say.

18 BY MR. SHALOV:

19 Q. Could be?

20 A. Could be. This could have been triggered by
21 something that my manager saw, or the shop steward, but
22 me individually, I can't say yes or no, it's too long
23 ago.

24 Q. Then you write, quote, if you come in early
25 without approval, you will have to wait or return until

[Page 77]

1 start time, close quote? Do you see that?

2 A. Yes.

3 Q. Why did you write that?

4 A. Basically, if you weren't instructed, you came
5 in unapproved and you are going to start working --
6 that if you shouldn't be there, you shouldn't be there.

7 Q. I thought you told me earlier that you never
8 saw people come in early, ever?

9 A. Like I said, this could have been somebody
10 else witnessing and coming to me to write the e-mail.

11 Q. I thought you never heard of a supervisor
12 telling you --

13 A. I'm sorry. He was my manager. The details of
14 it, I can't exactly --

15 Q. Let's go to the next page.

16 You write, quote, be conscious of your Kronos
17 swipe, close quote. Do you see that?

18 A. Yes.

19 Q. Why did you write that?

20 A. There is a lot of missed punches and failed
21 punches in the department where they failed to punch.

22 Q. Reasons for overtime will be kept in a log for
23 upper management. Do you see that?

24 A. Yes.

25 Q. Are there forms or documents that describe or

[Page 83]

1 international flights coming in?

2 A. It's from the international flights. They are
3 processed by the formal entry group, not by the flight
4 group. They have the complete control for the
5 processing time of these shipments.

6 Q. Let's go to the page 5353. If you could read
7 this e-mail chain on this page and the succeeding page.

8 A. Okay.

9 Q. Did you look at the succeeding page as well?
10 It looks like somebody is asking you to make
11 an adjustment in the Kronos system?

12 A. Yes.

13 Q. So it looks like this person worked through
14 lunch and wanted to get paid for that time, right?

15 A. Yes.

16 Q. And then you write, on January 17th, that
17 Kronos will deduct the time regardless?

18 A. Yes.

19 Q. She will get an automatic lunch reduction
20 whether or not she took lunch?

21 A. Yes.

22 Q. Then you said: You are not allowed to alter
23 Kronos. Do you see that?

24 A. Yes.

25 Q. What did you mean by that?

[Page 84]

1 A. That basically that I feel uncomfortable
2 changing information in the system, but I said, let me
3 see what I can do, because I didn't want them to not
4 get paid for lunch.

5 Q. Now I need to understand.

6 Do you have the capability, whether you feel
7 comfortable or not, to change information in Kronos?

8 A. Yes.

9 Q. So this wasn't a problem about having an
10 ability to change it, you just didn't feel like you
11 were comfortable doing it?

12 A. I want to discourage them from not taking
13 their lunch because it's -- I believe it's something
14 they need to do. I believe it's Florida law. I am not
15 really sure. I shouldn't say that, but I don't want to
16 encourage people to not take lunch. They need the
17 break period.

18 Q. That's not the issue, she needs to get paid
19 for this time?

20 A. Yes.

21 Q. What did you do to make sure she got paid?

22 A. I added it on to her time to get paid.

23 Q. Did you actually go into Kronos and make an
24 alteration?

25 A. I believe I did, yes.

[Page 86]

1 Feel free to read as much of it as you want.

2 Mr. Camera, I'm only going to ask you if you ever seen
3 it before?

4 A. No.

5 Q. Mr. Camera, have you ever seen this before?

6 A. No.

7 (Thereupon, the document was marked for I.D.)

8 BY MR. SHALOV:

9 Q. Let's mark as Exhibit 4 a collective
10 bargaining agreement between DHL and the International
11 Brotherhood of Teamsters 769.

12 Again, my only question for you, Mr. Camera,
13 is, have you ever seen it before?

14 A. Yes.

15 (Thereupon, the document was marked for I.D.)

16 BY MR. SHALOV:

17 Q. Can you identify it?

18 A. This is our collective bargaining agreement
19 for our clerical employees at Miami Gateway.

20 Q. Have you reviewed this document before?

21 A. Yes.

22 (Thereupon, the document was marked for I.D.)

23 BY MR. SHALOV:

24 Q. I will mark as the next numbered exhibit what
25 appear to be some pay rules, Bates Numbers 2986 through

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

I, Paul Cunningham, Florida Professional Reporter, certify that I was authorized to and did stenographically report the deposition of Albert Camera, pages 1 through 94; that a review of the transcript was requested; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 27th day of April, 2014.

PAUL CUNNINGHAM, FPR
FLORIDA PROFESSIONAL REPORTER

CAMERA DEPOSITION EXHIBIT 4

COLLECTIVE BARGAINING AGREEMENT

Between

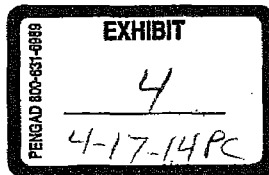
DHL EXPRESS (USA), INC.

And

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 769

_____, 2010 THROUGH _____, 20__

Tentative Agreement reached on April 14, 2010



Upon ratification, the bargaining unit will become part of the Teamsters/DHL National bargaining unit and will be covered by the Teamsters/DHL National Agreement and the Operational Supplement.

TA on 4-14-10

The following provisions shall become the Local 769 Gateway Clerical Rider

PREAMBLE

This Agreement is entered into by and between DHL EXPRESS (USA), INC. hereinafter the "Company", "Employer" or "DHL"), the TEAMSTERS DHL NATIONAL NEGOTIATING COMMITTEE ("TDHLNNC"), representing Local Unions affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and LOCAL UNION 769, affiliated with THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS (hereinafter "Union" or "Local 769"). This Local Rider is supplemental to and becomes a part of the National Master DHL Agreement, hereinafter referred to as the "National Agreement" and the Gateway Operational Supplement, hereinafter referred to as the "Operational Supplement", for the period commencing April 1, 2008, through March 31, 2013. This Local Rider shall not become effective unless and until it is ratified by the Employer's Gateway employees represented by Local 769 and approved in writing by the National Union Committee as provided in the National Agreement {Article 2, Scope of Agreement, Section 1, Scope and Approval of Local Supplements).

The terms set forth in each Local Rider shall supersede any conflicting terms in their applicable Operational Supplement. Challenges/Grievances arising out of alleged conflicts shall be submitted directly to the National Grievance Committee for a decision.

ARTICLE 10. BARGAINING UNIT

Section I. Departmental Structure

A. The collective bargaining unit covered by this Agreement shall be structured on a departmental basis. All such departments, including the classification of employees customarily assigned to work therein, are set forth below:

Import/Clearance Department
International Service Agents

Export Department
International Service Agents

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 2 of 32*

B In addition, a Lead Person(s) may be assigned to any of the foregoing departments, as the Employer deems appropriate, to fulfill the operational needs of the business, as provided in Article 4 of the Gateway Operational Supplement ("Lead Personnel").

C. If the parties are unable to conclude negotiations over the effects of the employer's decision to add, or restructure classifications and departments, as provided in the Gateway Operational Supplement, within thirty (30) days after the commencement of such negotiations, the Union reserves the right to submit any unresolved bargaining issues to arbitration under the grievance and arbitration procedures of Article 7 of the National Agreement ("Grievance and Arbitration Procedure"). The arbitrator shall have authority to issue a final and binding award resolving any such effects bargaining issues, including the award of pay adjustments retroactive to the effective date of any changes in accordance with Article 2, Section 4 of the National Agreement ("Scope of Agreement-New or Changed Classifications").

TA on Article 10 on 2-23-10

ARTICLE 11 STEWARDS

A. The Employer recognizes the right of the Union to designate no more than one (1) full-time unit employee to serve as the primary steward for the unit covered hereunder, and no more than two (2) full-time unit employees to serve as an alternate steward.

B. The primary and alternate stewards are employees of DHL and have no managerial or supervisory authority.

C. Upon two (2) weeks advance, written notification to the Employer by the Union, a Steward (either the primary or an alternate, but in no event more than one at a time) may attend a Union-conducted training session (not to exceed two (2) sessions per calendar quarter) without loss of pay (up to but not in excess of eight (8) hours per session). Payment is to be made only in those circumstances where the employee attends such training on his/her regularly scheduled work day and duty hours.

D. The authority of the primary and alternate stewards designated by the Union shall be limited to, and shall not exceed the duties and activities set forth in Article 3 of the Gateway Operational Supplement ("Stewards") and the following:

1. The collection of dues when authorized by the appropriate Local Union official.

TA on Article 11 on 2-23-10

**DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 3 of 32**

ARTICLE 12. UNION VISITATION PRIVILEGES

Section 1. Union Access

Authorized agents of the Union shall have access to the Employer's establishment during working hours for the purpose of adjusting disputes, investigating working conditions, collecting dues, and ascertaining that the Agreement is being adhered to.

Section 2. Union Representative

For purposes of this Article of the Agreement only, the term Union Representative refers to individuals actively employed and paid by either the International or Local Union, and excludes any and all actively employed unit employees, including the primary and alternate stewards.

Section 3. Notice

Upon arrival at the Employer's Miami Gateway, the Union Representative shall announce his/her presence to the Employer and, during the course of such visit, the Union Representative shall so conduct himself/herself as not to interfere with the operations of the office or other work areas within the Employer's facility or on its premises. If it is required by applicable government agencies, a shop steward, or if one is unavailable, then another bargaining unit employee, shall accompany the Union Representative during his/her exercise of the visitation privileges herein provided.

TA on Article 12 on 2-23-10

ARTICLE 13. SCOPE AND ASSIGNMENT OF UNIT WORK

Section 1. Employee Performance of Unit Job Assignments

A. All unit employees shall abide by and comply with all work directives, instructions and/or job assignments responsibly issued to them by the Employer and its supervisory personnel.

B. Employees may be assigned temporarily for a period not to exceed thirty (30) calendar days, without a reduction in pay, to perform any and all unit work duties which they are qualified to perform safely within any unit classification and department covered by this Agreement as, in the discretion of management, operational conditions require.

C. Any concerns raised by the Union concerning temporary assignments, such as fairness in the distribution of such assignments among those qualified to perform them and opportunities for cross training to be qualified to perform such temporary assignments, will be promptly addressed by the Company and discussed by appropriate representatives of the Union and Company.

TA on Article 13 on 2-23-10

ARTICLE 14. PART TIME EMPLOYEES

A. A regular part-time unit employee is an individual who is regularly scheduled to work a minimum of at least fifteen (15) up to a maximum of thirty-two (32) hours per week.

TA on Article 14, Subparagraph A on 2-23-10

B. The Employer may continue to employ part-time personnel, as defined above, to fulfill its operational needs, subject to *the terms* and conditions set forth in this Article.

TA on Article 14, Subparagraph B on 2-23-10

C. The regular work week for part-time employees shall consist of at least fifteen (15) hours (and may not exceed thirty-two (32) hours of work) within the Employer's payroll period (presently 12:01 AM Saturday through 12:00 PM Friday). Exceptions to the thirty-two (32) hour maximum may be made where a part-time employee is assigned to fill in a full-time position vacancy (such as filling an opening between bid periods, filling in for absences, etc.). The regular work day for such part-time employees shall consist of at least four (4) consecutive hours, unless a shorter shift is mutually agreed by the Employer and the employee to accommodate an employee need or request.

TA on Article 14, Subparagraph C on 2-23-10

D. Unless specifically stated otherwise in this Agreement, no fringe benefits (insurance, vacations, holidays, personal time, other paid time off, leaves of absence, etc.) apply to any part-time employees covered by this Agreement. The only fringe benefits that part-time employees hired after the effective date of this Agreement shall be entitled to shift differential (Article 21, Section 3), tuition reimbursement (Article 18, Section 2) and pro-rated vacation benefits (Article 22). Part-time employees employed prior to the effective ratification date of this Agreement are referred to as "Incumbent Part-Time Employees." "Incumbent Part-Time Employees" includes both those employees working as part-time employees

as of the ratification date of this Agreement, but also any full-time employee employed as of the ratification date of this Agreement who subsequently converts to part-time status.

TA on _____.

E. At all times during the life of this Agreement, the Employer may hire and retain in its employment within the unit as many part-time employees as it deems appropriate to fulfill its operational needs, provided that part-time employees shall comprise no more than ten percent (10%) of the fulltime workforce (including full-timers on split shifts) in any given week, not counting any part-time employees filling in for full-time vacancies. (In calculating the number of allowable part-time employees, partial numbers are rounded up. For example, if there are 12 full-time employees, 10% equals 1.2 employees, which is rounded up to 2 allowable part-time employees.)

TA on Article 14, Subparagraph E on 3-9-10

F. Part-Time Upgrades To Full-Time Positions - Job bidding for part-timers in general, as well as for those part-time employees seeking to bid into full-time positions, is addressed in the Job Bidding & Filling of Vacancies Article of this Agreement (Article 17).

TA on Article 14, Subparagraph F on 2-23-10

ARTICLE 15. USE OF AND PERFORMANCE OF BARGAINING UNIT WORK BY PERSONNEL OTHER THAN REGULAR EMPLOYEES

Section 1. Performance of Unit Work by Supervisors/Management Personnel

Supervisors/management personnel may continue to perform unit work, as operational conditions require, in the flowing circumstances:

- (a) in emergency situations;
- (b) where available personnel are not capable, qualified or do not have the expertise of performing the required work;
- (c) training of employees in the proper performance of their work duties;
- (d) protection of the property of the Employer or its customers;
- (e) to ensure the safety of employees;

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 6 of 32*

DHL 0000002839

- (f) to expedite the clearance of material to assure service commitments and to meet time constraints, provided such work is not performed on a regular basis;
- (g) escorting non-DHL personnel;
- (h) audit and review reports and paperwork (e.g., such as inventory control reports and related scanning); and/or
- (i) in handling a package(s) at the express request of governmental officials involved in law enforcement, Customs or Homeland Security investigations/enforcement activities, or other governmental agencies.

Verbal notification of the performance of unit work, as afore-said (with the exception of item i)), shall be provided to the steward.

TA on Article 15, Section 1 on 2-23-10

Section 2. Performance of Unit Work by Subcontractors

The Employer may continue to engage subcontractors to perform bargaining unit work of the same nature, and to the same extent and degree, as it did prior to the execution of this Agreement, as operational conditions require. Examples include:

- (a) archiving files;
- (b) import/export inspection services and documentation services;
- (c) for a period of ninety (90) calendar days in connection with "new" work involving a significant increase in volume (i.e., involving at least one (1) added flight or four (4) or more additional trailers). The ninety (90) day period shall commence from the date of the commencement of such "new" work. Notification thereof shall be submitted promptly to the Union in writing. The aforesaid ninety (90) day period may be extended by mutual agreement of the parties for an additional thirty (30) days and the Union's consent thereto shall not unreasonably be withheld.

All of the foregoing rights to subcontract are agreed to on the express understanding that such subcontracting may not result in the reduction of the regular work day of employees employed in the bargaining unit as of the effective date of this Agreement, who, but for the subcontracting, would have performed the work in question.

TA on Article 15, Section 2 on 3-9-10

Section 3. Performance of Unit Work by Temporary Workers

Temporary workers retained through a temp agency are not covered by this Agreement and have no rights hereunder. Casual employees are covered by this Agreement, but only to the extent provided in this Section. Casual employees shall be paid at an hourly rate of pay of twelve dollars (\$12.00) per hour. Casual

employees shall not receive any other benefits under this Agreement, including but not limited to health and welfare coverage and contributions, pension coverage and contributions, paid time off or any other benefits provided for this Agreement. Casual employees and temporary workers (hereinafter referred to collectively as "casual/temporary workers") may be employed at the discretion of the Employer to perform bargaining unit work, but in no event may such casual/temporary workers exceed ten percent (10%) of the full-time work force in any given week. No casual/temporary worker may work more than forty (40) hours in any given week, except when casual/temporary workers are utilized to fill in for vacancies (such as for vacations, on the job injuries, illness, other leaves of absence, vacancies created by employment separation pending the hiring of new employees, etc). (In calculating the number of allowable temporary workers, partial numbers are rounded up. For example, if there are 12 full-time employees, 10% equals 1.2 employees, which is rounded up to 2 allowable temporary employees.)

TA on Article 15, Section 3 on 3-9-10

Section 4. Rerouting Work

Nothing contained herein, however, shall preclude the Employer, for legitimate operational considerations (the determination of which shall be the exclusive function of the Company) from rerouting planes, line haul trucks and/or other means of transportation, which regularly and customarily landed or arrived at the Miami Gateway with shipments that were unloaded, loaded or otherwise processed by unit personnel, to bypass Miami International Airport and the Employer's Miami Gateway altogether and proceed directly to any other DHL facility within the DHL global network. Such rerouting, with its resultant diversion of shipments, shall not constitute or, in any way, be deemed to constitute a violation of any of the provisions of this Agreement.

TA on Article 15, Section 4 on 2-23-10

Section 5. Transfer of Work

A. In the event the Employer opens a new facility outside the jurisdiction of this Agreement or should the Employer transfer work presently performed or hereafter assigned to the bargaining unit, to another or new operation of the Employer, which transfer would result in layoffs of employees covered by this Agreement, the Employer will, at least thirty (30) days prior to any such transfer, notify the Union and offer employees the opportunities (for any available jobs at the new location) by seniority, senior employees first, to transfer to the new operation that results from the transfer of work.

B. The Company may not, as a result of such work transfer layoff any full-time employee on the seniority date as of the date of ratification (red-circled employees) prior to 8/1/2010. The Company also may not, as a result of such work transfer layoff more

than three (3) red-circled full time employee during the remainder of the term of this collective bargaining agreement. Further, in the event that such a transfer results in a layoff prior to October 1, 2010, the restrictions on temporary workers will take effect on that date. The Company is under no obligation to replace employees who leave through regular attrition, but attrition numbers will count against any work transfer reductions.

C. If an Employee accepts a transfer, he will retain his seniority for the purpose of fringe benefits and vacation pay only, provided that this shall not be construed to require the violation of any contractual obligation (in the event there is a labor agreement in place at the new operation) at the transferred location. An employee shall retain his seniority standing at the original terminal for a period of eighteen (18) months in the event the new operation changes locations or terminates and reverts back to the original operation.

D. If the employee declines to accept a job opportunity at the new operation he shall receive a lump sum payment of twenty five thousand dollars (\$25,000.00) in exchange for a general employment release agreement on a form to be provided.

E. By agreeing to this Transfer of Work provision, the Union clearly and unambiguously waives its right to bargain over the decision and effects of the Employer's future possible transfer of work.

TA on Article 15, Section 4 on 4-14-10

ARTICLE 16. WORK DAY, WORK WEEK, SCHEDULING

Section 1. Regular Work Week

A. 1. Employees covered by this Agreement may work either full-time or regular part-time schedules. The Employer shall determine the number and type of regular work week and regular work day shifts (including split shifts) their starting and ending times and the number of employees, by classification, required to staff each regular work week, work day and/or split shift which have been so scheduled.

2. By the same token, once established, the Employer may discontinue utilizing and maintaining a split shifts, as it alone deems appropriate in accordance with the operational needs of the business.

3. Except as expressly provided below, nothing herein contained in this Article shall constitute or be deemed to constitute a guarantee to an employee of a minimum number of hours of work per day or per week; provided, however, that full time employees shall be guaranteed forty (40) hours of work per week, except for circumstances addressed in Section 3 of this Article, layoff or when such employees volunteer for early release.

B. For full time employees with a regularly scheduled forty (40) hour work week, the regular work day shall consist of eight (8) consecutive hours, excluding an unpaid meal period of one-half (1/2) hour.

TA on Article 16, Section 1 on 3-9-10

Section 2. Meal Period

1. **Full-Time Employees.** Full-time employees (i.e., regularly scheduled to work forty (40) hours per week) shall receive an unpaid one-half (1/2) hour meal period on each regularly scheduled work day. The meal period shall be scheduled to start on or after the third (3rd) hour of the employee's shift but prior to the commencement of the sixth (6th) hour, if at all reasonably possible.

2. **Part-Time Employees.** Part-time employees who perform work duties for the Employer in excess of six (6) hours on any given day (whether scheduled or not) shall receive an unpaid one-half (1/2) hour meal period, as scheduled by the Employer in accordance with the operational needs of the business; any and all part-time employees who perform duties for the Employer from four (4) up to but not in excess of six (6) hours on any given day (whether regularly scheduled or not) shall not be entitled to an unpaid meal period.

TA on Article 16, Section 2 on 3-9-10

Section 3. Shifts

A. In accordance with the operational needs of the business, the Employer may also establish split shifts, consisting of two (2) segments of not less than three (3) hours. Full-time split shifts shall not apply to any full-time employees employed as of the date of Ratification. Furthermore, at no time may full-time split shifts comprise more than ten percent (10%) of the full-time bid positions. (In calculating the number of allowable split shifts, partial numbers are rounded up. For example, if there are 12 full-time employees, 10% equals 1.2 full time shifts, which is rounded up to 2 allowable split shifts.)

TA on Article 16, Section 3.A on 3-9-10

B. Regularly scheduled days off for an employee shall be assigned by management within the seven (7) calendar day payroll period in accordance with the operational requirements of the business and full-time employees shall have at least two (2) consecutive calendar days off, unless otherwise agreed by an employee and the Company.

TA on Article 16, Section 3.B on 4-14-10

C. Emergencies arising from acts of God or labor disturbances shall be reason to cancel scheduled work hours without pay until such time as emergency conditions subside.

TA on Article 16, Section 3.C on 2-23-10

D. 1. When operational need arises, employees released early from work may use available vacation to supplement hours. The Company will initially request volunteers to be released early from work, but reserves the right to release employees (other than full-time employees entitled to a forty (40) hour guarantee) if volunteers are insufficient to satisfy operational needs. The opportunity to be released early will first be offered to full-time employees in seniority order, then to part-time employees in seniority order, then to casual employees and finally to temporary workers.

2. Employees with a regular weekly schedule of forty (40) hours, who volunteer to be released early from work, shall forfeit the remaining regularly scheduled hours for that day, and may use available vacation to replace such hours.

TA on Article 16, Section 3.D on 2-23-10

Section 4 – Break Periods

A. Full-Time Employees. Full-time employees (i.e., regularly scheduled to work forty (40) hours per week) shall be eligible to receive two (2) fifteen (15) minute paid breaks during the course of their regularly scheduled work day, as assigned by the Employer in accordance with the operational needs of the business. If at all reasonably possible, the first such break will be scheduled during the first one-half (1/2) of the employee's shift, and the second break shall be scheduled during the second half (1/2) of the employee's shift. Employees may request that their breaks be combined in order to secure a one-hour lunch. Approval for such breaks will not be unreasonably denied.

B. Part-Time Employees.

I. Less than 4 Hours: Part-time employees who perform work duties for the Employer for less than four (4) hours on any given day (whether regularly scheduled or not) shall be ineligible for a break.

2. 4 Hours but less than 8 Hours: Part-time employees who work from four (4) up to eight (8) hours on any given day (whether regularly scheduled or not) shall be eligible for one (1) fifteen (15) minute paid break during the course of their work

day, as assigned by the Employer in accordance with the operational needs of the business.

3. 8 Hours or More: Part-time employees who perform work duties for the Employer for eight (8) or more hours on any given day (whether regularly scheduled or not) shall be eligible to receive two (2) fifteen (15) minute paid breaks on the very same basis such breaks are provided to full-time employees under Paragraph A of this Section.

Failure to Take Breaks. Except as otherwise provided by Federal or State law, the failure to utilize or take such breaks, (due to the voluntary action of the employee, or due to the Employer's inability to schedule for legitimate operational reasons), during the course of the employee's shift, shall not be compensable.

TA on Article 16, Section 4 on 4-14-10

ARTICLE 17. JOB BIDDING & FILLING OF VACANCIES

A. Within sixty (60) calendar days after the ratification of this Agreement, the Employer shall determine the number and type of regular full-time and part-time work week and work day shifts, their starting and ending times and the number of employees required to staff each shift for each Department and shall post the vacancies for bid.

B. There will be two general bids each year, one normally conducted in November for work schedules to become effective on or about December 26, and another conducted in June for work schedules to become effective on or about July 1. All general bids shall be posted for a period of fourteen (14) days. In addition, the Employer, after prior notice and consultation with the Union, may schedule additional bids for legitimate operational needs (e.g., significant sustained changes in volume, changes in aircraft schedules, etc). Vacations that were previously scheduled and approved will not be disrupted as a result of a subsequent bid.

C. An employee must possess the qualifications to perform a particular job, as established within the Company's sole discretion, to successfully bid the position. Those with departmental seniority shall bid first in accordance with the seniority provisions set forth in Article 18 ("Seniority, Layoff and Recall") of this Agreement. All other full-time employees shall then bid in seniority order. After all full-time employees have bid, part-time employees shall bid in seniority order.

D. To fill any work shift posted as part of the job bid which is not bid by any qualified employee, the Company shall fill the position with employees who have not bid on a shift, and then shall fill any remaining openings with a new hire (full- or part-time) or casual or temporary worker.

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 12 of 32*

DHL 0000002845

E. When a new regular full-time straight-shift position becomes available, or an existing regular full-time straight-shift position becomes permanently vacant and the next General Bid will not take effect within forty-five (45) days of when the position is created or vacated, then such position shall be subject to bid from among the full-time employees who have less seniority than the individual who vacated the position. The Employer may temporarily fill such vacancy with a casual/temp or part-time employee for fourteen (14) days pending the completion of the bid process. The vacancy will first be offered to employees within the same department who have Departmental Seniority. If no one within the department who has Departmental Seniority bids on the vacancy, it will be offered on a Unit-wide seniority basis to employees within the unit who have less unit seniority than the employee who vacated the position. Any position vacated by the successful bidder will, in turn, be filled in the same manner. The remaining vacancy created by such second move shall be filled by the Employer with a new hire, a part-time employee or a casual/temp until the next General Bid.

TA on Article 17 on 3-9-10

ARTICLE 18. SENIORITY, LAYOFF AND RECALL

Section 1. Seniority Definitions

The generic term "seniority," as used in this Article and else where in this Agreement has the same meaning and application as does the term, length of service. Seniority shall be calculated on an Employer and unit basis, as follows:

Employer Seniority, - shall be calculated from the date of the employee's first employment with the Employer, its predecessor, affiliates, subsidiaries or acquired companies, anywhere within or without the country, or re-employment by DHL following a loss of seniority, pursuant to the terms of Section 3 of this Article.

Unit Seniority, - shall be calculated from the date on which the employee first commenced working (by hire or transfer) for the Employer, at its Miami Gateway (Building 716-F) in the collective bargaining unit covered by this Agreement, or re-employment following a loss of seniority, pursuant to the terms of Section 3 of this Agreement below. For purposes of this Agreement, Unit Seniority shall be equal to the employee's Employer Seniority for any employees employed at the Miami Gateway as of the date of Ratification.

TA on Article 18, Section 1 on 3-9-10

Section 2. Application and Use of Seniority

1. Unit Seniority - shall be utilized, insofar as may reasonably be practical, in the filling of permanent vacancies in a contractual department under the circumstances set forth in Article 17 ("Job Bidding & Filling of Vacancies") of this Agreement; in determining the

DHL – Teamsters Local 769 Negotiations

Tentative Agreement reached 4-14-2010

Page 13 of 32

order of layoffs and recall from layoff within a particular unit classification of the contractual department in which the overstaffing exists, as provided in Section 4 of this Article; and in the selection of vacation weeks, as provided in Article 22, Section 3 ("Vacation Scheduling and Usage") of this Agreement. In the event unit seniority among two (2) or more qualified employees is equal, Employer seniority shall prevail.

2. Employer Seniority - shall be utilized in determining entitlement to vacations and other fringe benefits herein provided, where length of service is a factor. In all cases where Employer seniority is equal, priority on the seniority roster shall be determined by employment application date and, thereafter, if the dates are identical, by coin toss administered by the Employer in the presence of the steward or other Union representative and the affected employees.

3. Departmental Seniority for Red-Circled Employees - Employees employed in the bargaining unit in the Miami Gateway on or before Ratification shall have, in addition to Unit and Employer Seniority, Departmental Seniority, which shall be equal to the employee's Employer Seniority. Such red-circled employees may not be displaced from their department (i.e., import/export) by other, non-red-circled employees, and, within their department, job bidding (essentially work schedules and shifts) and vacation bidding shall be governed by department seniority as among the red-circled employees. In effect, this means that red-circled employees will use their department seniority for job and vacation bidding first before any other employees in the unit bid for jobs/vacations in their department. Red-circled employees shall lose their status as red-circled employees with Department Seniority rights if they voluntarily transfer out of the department in which they were employed as of Ratification.

TA on Article 18, Section 2, Subsections 1-3 on 3-9-10

4. Limitations on Seniority Usage - Seniority does not give an employee the right to choose or demand a specific job assignment and, under no circumstances (except for bumping under the provisions of Section 6 of this Article) may it be used to replace or to substitute a less senior employee on a shift on which the less senior employee has been assigned, and on which he/she is currently working.

TA on Article 18, Section 2, Subsection 4 on 2-23-10

Section 3. Loss of Seniority - Termination of Employment In addition to the reasons set forth in Article 7, Section 3 of the Gateway Operational Supplement ("Seniority - Loss of Seniority - Termination of Employment"), an employee shall lose all accumulated seniority for any of the following reasons:

1. Layoff for eighteen (18) or more consecutive months, or for the length of the employee's continuous service with the Employer in the unit covered by this Local Rider.

***DHL - Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 14 of 32***

2. Absence for a total of twenty-four (24) months for any reason, unless a longer period is required (i) as a reasonable accommodation to a "qualified individual with a disability" in accordance with the requirements of the Americans with Disabilities Act. (hereinafter called the "ADA"), (ii) to provide additional time for recovery/rehabilitation where the medical evaluation is that there is a reasonable likelihood of recovery from an injury or illness sufficient to enable the employee to return to normal duty, or (iii) as otherwise required by Federal or State law.

TA on Article 18, Section 3 on 2-23-10

Section 4. Layoffs

Should it become necessary for the Employer to reduce its work force within any of the contractual departments, layoffs shall be effectuated from the applicable unit classification of the specific department in which the overstaffing exists, as follows:

1. Probationary employees and/or temporary employees, if any, within the affected unit classification, of the specific contractual department, shall be laid off first without regard to their individual periods of employment.
2. If further layoffs are required within the affected unit classification, the employee (full-time or part-time) with the least unit seniority therein shall be laid off followed, in ascending order, by the next least senior employee in the affected classification, etc.; provided, however, that any red-circled employee with Departmental Seniority shall not be laid off out of their department until all other employees are first laid off out of their department in the affected classification

TA on Article 18, Section 4 on 3-9-10

Section 5. Notification of Layoff

In the absence of dire emergency or other exigent circumstances, the Employer shall provide advance notification of layoff to affected employees (excluding probationary and/or temporary employees). A copy of such notice shall be provided to the Steward and sent via mail, fax or email to the Union Hall.

TA on Article 18, Section 5 on 2-23-10

Section 6. Bumping

1. An employee scheduled to be laid off under the provisions of Section 4 of this Article may "bump" a unit employee within any other classification of any other contractually covered department, provided such employee:

(a) if full-time

- (i) bumps (at the full-time employee's option) either the full-time or part-time employee with the least unit seniority in the other classification and contractual Department into which he/she is eligible to bump; and
- (ii) possesses greater unit seniority than the employee he/she desires to bump; and
- (iii) satisfactorily meets the minimum qualifications (as set forth in the Job Descriptions) of the classification of the employee he/she desires to bump; and
- (iv) assumes the same work week and work day shift schedule of the employee he/she desires to bump.

-or-

(b) if part-time

- (i) bumps the least senior employee (regardless of fulltime or part-time status) in the other classification and contractual Department into which he/she is eligible to bump; and
- (ii) possesses greater unit seniority than the employee he/she desires to bump; and
- (iii) satisfactorily meets the minimum qualifications (as set forth in the Job Descriptions) of the classification of the employee he/she desires to bump; and
- (iv) assumes the same work week and work day shift schedule of the employee he/she desires to bump.

2. The employee exercising the bump shall be paid at the wage rate of the classification into which he/she bumps, provided such rate is equal to or less than his/her current rate of pay.

TA on Article 18, Section 6.2 on 2-23-10

3. An employee desiring to exercise a bump must advise the Employer of his/her decision within three (3) calendar days after receipt of written notification of layoff. Failure to notify the Employer within such time period shall result in the forfeiture of bumping privileges.

TA on Article 18, Section 6.3 on 2-23-10

4. Bumping privileges shall not be extended to probationary and/or temporary employees.

***DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 16 of 32***

TA on Article 18, Section 6.4 on 2-23-10

5. An employee exercising a bump in lieu of layoff shall be given priority in returning to a subsequent vacancy in the same job classification previously held by the employee, provided such vacancy occurs within one (1) year after the exercise of the bump.

TA on Article 18, Section 6.2 on 2-23-10

Section 7. Recall

1. Unit employees on layoff shall be recalled to fill available vacancies for which they are qualified in reverse order of lay-off (i.e., last to be laid off - the first to be offered recall). In the event of a recall, the laid off employee shall be notified by certified mail with a copy to the Union, and if the employee fails to comply, he/she shall lose all seniority rights under the Agreement and shall be considered a voluntary quit.

2. Unit employees (excluding probationary employees) shall enjoy recall rights for a period not to exceed eighteen (18) consecutive months following the effective date of the layoff, or the length of the employee's continuous service with the Employer, whichever is less.

3. Probationary employees have no rights to recall hereunder.

TA on Article 18, Section 7 on 2-23-10

ARTICLE 19. ATTENDANCE AND APPEARANCE POLICIES

Section 1. Clean and Neat Appearance

It is expressly recognized and agreed herein that DHL, is engaged in a highly competitive service business that requires it to be acutely sensitive to the needs, requirements and expectations of its customers. Accordingly, all employees shall maintain a clean and neat personal appearance and, otherwise, dress in strict accordance with the Employer's reasonable dress code standards and requirements. Facial hair, including but not limited to, beards, goatees and moustaches, must be clean and neat in appearance, appropriate for the work environment, and in compliance with health and safety standards.

Section 2. Uniforms

***DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 17 of 32***

The Employer may, at its option, provide employees with uniforms to be worn during all working hours. Such uniforms, if provided, shall be at no cost to the employee. Uniforms which are worn out through normal wear and tear will be replaced by the Employer at no cost to the employee, provided the worn-out uniform is returned to the Employer. The nature, color and style of such uniform shall be vested solely with the Employer. Each employee to whom a uniform has been issued shall be expected to report to work each day in a clean uniform. Each employee who the Company chooses to provide uniform pants and/or shirts shall be issued the number of pants and/or shirts equal to the number of regularly scheduled workdays in that employee's workweek.

Section 3. Attendance/Lateness Call-In Requirements and Procedure

Regular and timely attendance is required of all employees. Except in extreme emergencies, all lateness and absences, including those relating to illness or injury, shall be reported daily by the employee to his/her immediate supervisor or, in his/her absence, to another designated Employer official, as early as possible, but in no event later than one (1) hour prior to the beginning of the employee's shift. Unanticipated excessive lateness, i.e., over forty-five (45) minutes, shall be reported as soon as possible in accordance with the procedures of this Section. Absence or lateness reports shall not be left on voicemail or any other recording device, including email (except in those instances where there is no manager or supervisor on duty), and shall not be reported by any person other than the employee, except where extreme circumstances reasonably prevent the employee from personally reporting the lateness or absence. In cases where the absence or lateness is reported over the telephone, the employee has the responsibility for obtaining the name of the designated Employer official to whom the absence or lateness is reported. In addition, the employee shall state his/her name, the reason for not reporting to work and the anticipated duration of the lateness or absence. The failure to comply with the requirements of this Section shall result in the forfeiture of sick pay and other appropriate disciplinary action.

Section 4. Time Sheets and Time Clocks

A daily time record shall be maintained by the Employer at its place of business. All terminals shall have time clocks at such terminals. Employees shall punch their own time cards.

The Employer may substitute updated time recording equipment for time cards and time sheets.

The Employer may computerize the sign-in and sign-out records. However, at all times, the Union shall have reasonable access to a paper record of the sign-in and sign-out records.

TA on Article 19 on 2-23-10

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 18 of 32*

ARTICLE 20. DISCIPLINE AND DISCHARGE

Section 1. Discipline –

It is recognized that certain serious or multiple acts of misconduct may result in immediate termination including the terms set forth in Article 8 the Gateway Operational Supplement ("Discipline & Discharge") and the following:

- gross negligence;
- Failure or refusal, upon reasonable request, to submit to a search of person, property, locker or employee vehicle (located on Company premises) in connection with an investigation by management/supervisory personnel or security agents;
- Serious misconduct;
- Revocation or suspension of a drivers license required for the employee to perform their duties for ninety (90) or more calendar days (during which time the employee shall be suspended without pay);
- Revocation or suspension of Miami International Airport and US Customs and Border Protection identification badge for ninety (90) or more calendar days (during which time the employee shall be suspended without pay).

The warning notice(s) as provided herein shall not remain in effect to support further progressive disciplinary action for a period of more than six (6) months, provided there is no intervening misconduct within that six (6) month period. All warning notices, discharges, suspensions or other disciplinary action shall be confirmed in writing to the employee and Union. Any employee may request an investigation as to his/her discharge or suspension, and should the Company determine as a result of such investigation that such discharge or suspension was not for just cause, the Company shall eliminate or reduce the disciplinary action, up to and including reinstatement.

Appeal from a discharge, suspension or written warning notice must be taken within five (5) calendar days.

TA on Article 20, Section 1 on 2-23-10

Section 2. Investigatory Interviews of Unit Employees by Management and Supervision

A. In the event an employee is required to attend an investigatory interview with a supervisor or other management official which he/she reasonably believes will result in disciplinary action, any readily available Local 769 steward employed at the Employer's Miami Gateway facility may be present and participate at such investigatory interview, if requested by the employee, under the following conditions:

***DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 19 of 32***

1. The shop steward may represent the employee, including consult with the employee, assist him/her in presenting or clarifying facts and/or otherwise submit evidence or suggest further witnesses to interview.

2. Although the shop steward may represent the employee, he/she may not interfere with the Employer's interview of the employees, such as preventing the employee from answering relevant questions. In this regard, it is expressly understood and agreed that the Employer has no obligation to bargain with the shop steward during such interview, and that the employee shall answer personally all relevant and material questions posed to him/her by the Employer.

3. Should no steward be available, the employee shall be afforded the opportunity to telephone the Union's Business Representative who, in turn, may attend the investigatory interview in place of the absent steward or, in lieu thereof, the Union Representative shall designate another bargaining unit employee as an official Union representative. The Employer shall have no right to designate the designee for the Union Representative. It is understood and agreed, that if no steward is available and the Business Agent is unreachable by telephone, or the Business Representative or steward refuse to participate in the interview, or if the Business Representative refuses to designate an available employee to serve as the affected employee's representative, the right to representation shall be waived and the Employer may proceed with the interview in the absence of the steward and/or Business Representative.

4. The principal purpose of an investigatory interview is to enable the Company to conduct a just and thorough investigation of the incident in question, at the earliest possible stage, thereby ensuring proper and timely disciplinary action or exoneration. Under no circumstances will it be used to violate Weingarten rights of the employees.

B. In connection with alleged violations of Article 23 of the National Agreement ("Special Licenses and Drug /Alcohol Testing"), nothing herein contained shall prevent or preclude the Employer from declining to question the employee altogether and simply directing such employee to proceed immediately for alcohol/drug testing. In the absence of prior, express written authorization from the Employer's Miami Gateway Manager, or designee, a steward may not accompany the employee to the designated collection site and/or be physically present in the same room as the employee during the actual administration of the alcohol/drug testing procedures.

TA on Article 20, Section 2 on 2-23-10

Section 3. Polygraph Test

No employee covered by this Agreement can be subjected to a polygraph test administered by the Employer or conducted on the Employer's behalf.

TA on Article 20, Section 3 on 2-23-10

ARTICLE 21 WAGES & COMPENSATION

DHL – Teamsters Local 769 Negotiations

Tentative Agreement reached 4-14-2010

Page 20 of 32

Section 1. Retroactive to April 1, 2010, the following wage progression shall apply to all employees hired prior to ratification. Each such existing employee will enter the wage progression at the next highest to their pre-ratification rate of pay.

DOR	\$14.70
6 months	\$15.05
1 year	\$15.40
1.5 years	\$15.75
2 years	\$16.10
2.5 years	\$16.45
3 years	\$16.80
3.5 years	\$17.15
4 years	\$17.50
4.5 years	\$17.85
5 years	\$18.20
5.5 years	\$18.55
6 years	\$18.90
6.5 years	\$19.25
7 years	\$19.60
7.5 years	\$19.95
8 years	\$20.30
8.5 years	\$20.65
9 years	\$21.00
9.5 years	\$21.35
10 years	\$21.70
10.5 years	\$22.05

Employees who have topped out prior to April 1, 2010 will get \$700 lump sum bonus.

Employees who have topped out prior to April 1, 2011 will get a \$0.35 wage rate increase.

Employees who have topped out prior to April 1, 2012 will get \$700 lump sum bonus.

All employees hired after April 1, 2010 shall be compensated in accordance with the following new-hire progression: New hires who were temporary employees working at the DHL MIA Gateway on the date of ratification will enter the wage progression at the next highest to their pre-ratification rate of pay.

DOR	\$12.00
6 months	\$12.35
1 year	\$12.70
1.5 years	\$13.05
2 years	\$13.40
2.5 years	\$13.75
3 years	\$14.10
3.5 years	\$14.45
4 years	\$14.80
4.5 years	\$15.15
5 years	\$15.50
5.5 years	\$15.85
6 years	\$16.20
6.5 years	\$16.55
7 years	\$16.90
7.5 years	\$17.25
8 years	\$17.60
8.5 years	\$17.95
9 years	\$18.30
9.5 years	\$18.65
10 years	\$19.00
10.5 years	\$19.35

Section 2. The wages and lump sum payments set forth in Section 1 are inclusive of, and funded by, any Cost of Living Adjustments (COLA) set forth in the National Agreement.

Section 3. Lead Differential

Lead personnel (full-time employees only) selected by the Employer to serve as a Lead shall received a lead differential of one dollar (\$1.00) per hour only for full days worked in a lead capacity.

Section 4. Shift Differential

A. Shift differential payments for all full-time and regular part-time unit employees (but not casual employees), whose regular work day schedule falls within the time period from 6:00 P.M. to 12:00 A.M. Midnight (Evening), or from 12:00 A.M. Midnight to 8:00 A.M. (Night), shall be provided under the terms and conditions set forth herein.

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 22 of 32*

B. 1. In the event fifty-one percent (51%) or more of an employee's regularly scheduled work hours falls within either the applicable evening time period, or the night time period, shift differential shall be paid for all hours worked on such shift (e.g., employee regularly scheduled to work eight (8) hours per day from 3:00 P.M. to 11:00 P.M., shall receive shift differential payments for all eight (8) shift hours worked From 3:00 P.M. -11:00 P.M.).

2. If, however, only fifty percent (50%) of an employee's regularly scheduled work hours falls within either of the applicable evening or night time periods, shift differential shall be paid only for regularly scheduled hours actually worked after the commencement of the evening or night time periods (e.g., employee regularly scheduled to work eight (8) hours per day from 2:00 P.M. to 10:00 P.M., shall receive differential pay for only the four (4) regularly scheduled hours worked from 6:00 P.M. - 10:00 P.M.).

3. If less than fifty percent (50%) of an employee's regularly scheduled work hours falls within either of the applicable evening or night time periods, no differential payments whatsoever shall be provided for any and all hours worked.

C. Evening shift differential under paragraphs B.1 and 2 of this Section, shall be forty cents (\$0.40) per hour; Night shift differential shall be payable at the rate or fifty cents (\$0.50) per hour.

1. Shift differential payments shall be added to an employee's base hourly rate for the computation of overtime payments, if any, arising within the payroll week.

2. Except as otherwise required by Federal or State law, the foregoing shift differential payments shall not be added to an employee's base wage scale for the purpose of computing the other fringe benefits provided in this Agreement (e.g., sick leave, bereavement leave, jury duty, holidays and/or vacations).

Section 4. Overtime

A. One and one-half (1½) times the straight-time hourly rate of pay, as provided in this Agreement, shall be paid for all hours worked in excess of forty (40) hours in a work week. For purposes of counting the forty (40) hours, only actual work time, plus paid vacation and paid holidays (designated and floating) are counted.

B. There shall be no pyramiding of overtime or any other premium pay provisions of this Agreement.

C. Overtime shall first be offered among all qualified fulltime employees within a classification on the basis of unit seniority, however, overtime created by additional work beyond the end or before the beginning of a regular duty shift shall be offered on the basis of unit seniority to all qualified full-time employees

within a classification on duty (or scheduled for duty to work before a shift). Further, in the event that overtime work is created by a delay in an aircraft departure or arrival, the Employer will be permitted to offer (or Force by reverse order of seniority) overtime, regardless of unit seniority, to those employees working the flight,

D. If overtime needs cannot be filled by qualified volunteers, available qualified employees may be forced to work such overtime in inverse order of seniority.

E. The Company shall use its best efforts to excuse employees from overtime when, on special occasions, they ask to be excused at least one (1) day in advance.

Section 5. Call Back Pay

All full-time and Incumbent Part-Time employees called back to work, after they have clocked out and left the Gateway premises, and who report for work outside of their regularly scheduled duty hours, shall be guaranteed a minimum two (2) hours pay unless the time extends into the start of their work shift.

TA on Article 21 on 4-14-10

ARTICLE 22. VACATIONS

Section I. Vacation Accrual

All non-probationary unit employees (all full-time and regular part-time unit employees but not casual employees) accrue vacation hours beginning the First day of regular service as a regular full- or part-time employee. Employees are eligible to take accrued vacation after six (6) months regular service as a regular full- or part-time unit employee.

Vacation is accrued for only full-time and regular part-time employees and only for hours paid, excluding overtime. Vacation time is not accrued for any absences unpaid by the Employer, whether approved or unapproved, including but not limited to unpaid FMLA leaves, military leave, unpaid personal leave of absence, and worker's compensation leave. Vacation time is stated in hours earned, as opposed to days or weeks. Vacation does not accrue for overtime hours.

Vacation Accrual Event

Rate* Annual Vacation Allowance (Based on 40 hrs
paid/week for 52 weeks)

Upon Hire	3.846%	80
-----------	--------	----

***DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 24 of 32***

On 4th Anniversary	5.769%	120
On 9th Anniversary	7.692%	160
		hours

*The Vacation Accrual Rate is calculated by dividing the Annual Vacation Allowance by 2080 hours.

An employee's Accrued Vacation Hours is determined using the following formula:

Hours Paid/Wk** x Weeks Paid x Vacation Accrual Rate*** = Accrued Vacation Hours

** Excludes overtime hours

*** Based on years of service

For example, an employee with four (4) years of service, who received pay equal to twenty (20) hours/week for twenty-six (26) weeks, would calculate his/her Accrued Vacation Hours as Follows:

20 hrs. x 26 wks. x 5.769% = 30 Accrued Vacation Hours

In the event an employee's status changes - For example, from full-time to part-time - the Annual Vacation Allowance and Vacation Accrual Cap will be computed based upon the number of weeks working in each schedule.

Section 2. Vacation Accrual Cap

Vacation hours are accrued to a maximum equal to one and one-half (1½) times an employee's Annual Vacation Allowance, which is the Vacation Accrual Cap. Vacation hours cease to accrue when the Vacation Accrual Cap is reached. Once the unused accrued hours are reduced below the cap, by using vacation time, vacation accrual resumes. The Vacation Accrual Cap is calculated using current regularly scheduled hours per week, not hours paid.

A Vacation Accrual Cap is determined using the following formula:

Current Regularly Scheduled Hours/Week x 52 Weeks/Year x Vacation Accrual Rate* x 150% = Vacation Accrual Cap

*Based on years of service

For example, an employee with one (1) year of service, and with a current regular schedule of forty (40) hours/week, would calculate his/her Vacation Accrual Cap as follows:

40 hrs./wk. x 52 x 3.846% x 150% = 120 hours

DHL – Teamsters Local 769 Negotiations

Tentative Agreement reached 4-14-2010

Page 25 of 32

All unpaid, accrued vacation of an employee existing upon the effective date of this Agreement shall count toward that employee's Vacation Accrual Cap.

Section 3. Vacation Scheduling And Usage

1. Vacation bidding shall commence on January 1 each year and last no later than the final day of the month. Vacation shall be bid by department and shift, starting with those who have departmental seniority, and then by unit seniority among the remaining employees in the department.
2. The Company shall allow an average of ten percent (10%) of the employees off on vacation at any one time. This allotment will range between seven percent (7%) – thirteen percent (13%) each month, provided that at least two (2) vacation slots will be allowed in each department at a time. Leads shall bid their vacation separately, provided that no more than one (1) lead can be off at a time.
3. In the first round of vacation bidding, an employee will be allowed to select two (2) vacation slots of single weeks or as many consecutive weeks (not to exceed three (3) weeks) as requested on the first bid round, by seniority. On the second round of vacation bidding, employees will be allowed to bid any remaining vacation days, but may not displace any previous vacation bid. Employees may not trade vacation days. Any vacation not scheduled during the seniority vacation bidding may be scheduled later on a first come, first serve basis, subject to availability, and with at least seven (7) day prior request.
4. Vacation pay is based on an employee's applicable straight-time rate of pay at the time vacation is taken. With an employee request at least three (3) weeks in advance, vacation pay shall be paid to the eligible employee before he/she starts vacation, provided the vacation time taken is for at least two (2) full weeks.
5. Any accrued but unused vacation benefits in the employee's vacation bank upon termination of employment will be paid out as part of final compensation.

Section 4. Hospitalization During Vacation Time

Employees who are hospitalized while on vacation may use accrued sick time for such periods of hospitalization and may reschedule their vacation time for a later date.

TA on Article 22 on 4-14-10

ARTICLE 23. HOLIDAYS

Section I. Designated Holidays

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 26 of 32*

There are six (6) designated holidays for non-probationary full-time employees and Incumbent Part-Time unit employees. These holidays are:

New Years Day Memorial Day
Independence Day Labor Day
Thanksgiving Day Christmas Day

Each of the foregoing holidays shall be observed on the calendar day on which it falls.

Employees will work the designated holiday when it falls on a regularly scheduled duty day. If the Employer needs fewer individuals than those scheduled to work for a particular shift(s) on a designated holiday, after taking into account previously approved time off, then the Employer shall solicit volunteers to take the day off, starting with the most senior employee assigned to the particular shift which is over staffed for the day. If there are insufficient volunteers, employees shall be assigned the day off in reverse seniority order.

In order to be entitled to holiday pay, an employee must work his/her regularly scheduled work day immediately preceding the recognized holiday and his/her regularly scheduled work day immediately following the holiday, in addition to the holiday when scheduled as part of the duty shift, unless such absences are due to scheduled vacations or floating holidays, or are otherwise expressly excused in writing by the Company.

If a designated holiday is observed during an employee's scheduled vacation or day off, eligible employees shall be given alternate time off. The alternate holiday must be taken within ninety (90) calendar days and may be scheduled by the Company. If it is to be scheduled by the Company, notification will be provided as soon as practicable, but no later than sixty (60) days prior to the holiday.

Holiday pay shall not be provided to any employee who, on the day the designated holiday is observed, or on the employee's regularly scheduled day immediately before or after the holiday is observed, is (1) on sick leave, (2) on FMLA leave, (3) on unpaid leave of absence, (4) on layoff, or (5) is not otherwise actively working for the Company (e.g., on the job injury leave).

All qualified full-time and Incumbent Part-Time unit employees shall receive holiday pay for such holidays at their straight-time hourly rate. Such holiday pay shall be equal to the employee's regularly scheduled weekly hours of duty divided by five (5), but in no event more than eight (8) hours of holiday pay, regardless of the schedule worked. Employees who are normally scheduled to work more than eight hours a day (for example, for ten (10)-hour days per week) may be given the opportunity to offset lost hours with vacation time, or to make up the hours lost during the same work week. If employees work on a designated holiday, they will

***DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 27 of 32***

DHL 0000002860

be paid one and one-half (1½) times their straight-time hourly rate for all hours worked, in addition to holiday pay for which they are eligible.

Section 2. Floating Holidays

Regular full-time employees who are on the payroll as of January 1 will have five (5) floating holidays for the calendar year. Employees must complete the probationary period before taking floating holidays.

Newly hired regular full-time employees who have completed their probationary period, and existing employees who hid into a regular full-time position, are eligible for floating holidays on a prorated basis as follows:

Become regular full-time during: you are eligible for:

January or February	5 floating holidays
March or April	4 floating holidays
May or June	3 floating holidays
July or August	2 floating holidays
September or October	1 floating holiday

Eligible full-time employees must request a floating holiday at least twenty-four (24) hours in advance, and will be scheduled consistent with operational needs, on a first-come, first-served basis. Floating holidays may be scheduled for a full day's duty shift or, in the case of full-time split shift employees, for either segment of the employee's split shift.

Employees whose status changes to other than regular full-time (including termination of employment) are ineligible for floating holidays, nor can they use floating holidays that were available to them in their regular full-time status, nor will they be paid for any unused floating holidays, and any previously approved floating holidays will be rescinded.

Eligible full-time employees shall receive floating holiday pay based on their regularly scheduled hours per week divided by five (5), but in no event shall pay for a floating holiday exceed eight (8) hours, regardless of schedule worked.

Pay for a floating holiday does not exceed eight (8) hours, regardless of the schedule worked.

TA on Article 23 on 4-14-10

ARTICLE 24. HEALTH AND WELFARE

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 28 of 32*

All eligible non-probationary full and incumbent part time employees will be eligible to participate in the National Employee Health Plan. The employer agreed to make the following monthly contributions for each active, non-probationary full and incumbent part-time employee:

5/1/10 – 10/30/10 - \$515.00

11/1/10 – 10/30/11 – \$566.50

11/1/11- 10/30/12 – \$623.15

11/1/12-3/1/13 – 685.47.

TA on Article 24 on 4-14-10

ARTICLE 25. RETIREMENT PLANS

All eligible non-probationary regular full and part time employees will continue to be eligible to participate in the DHL 401(k) plan on the same basis as they the plan is general offered to non-represented non-exempt employees of the Employer.

TA on Article 24 on 4-14-10

ARTICLE 26. LEAVES OF ABSENCE

Section I. Sick Leave

A. Use of Sick Leave

Sick leave may be used by full-time and Incumbent Part-Time unit employees actively at work during absence caused by a non-work related injury or illness, for medical, dental or vision care appointments, or during the waiting period for a work-related injury or illness. Sick leave may be used in any manner authorized by and consistent with federal and/or state law.

The Company may require verification of an employee's eligibility to use sick leave hours in accordance with applicable law.

B. Amount of Sick Leave

All non-probationary full-time and Incumbent Part-Time unit employees accumulate sick leave beginning the first day of regular service as a regular full-time or Incumbent Part-Time unit employee. Eligible employees are eligible to use accumulated sick leave hours after completion of the probationary period.

Full-time employees may accumulate up to a maximum of forty-eight (48) sick leave hours over a twelve (12) month period four (4) hours per month) based on anniversary date, and may accumulate up to a maximum of one hundred sixty

DHL – Teamsters Local 769 Negotiations

Tentative Agreement reached 4-14-2010

Page 29 of 32

(160) hours. Sick leave hours do not accrue for absences unpaid by the Company, whether approved or not, including but not limited to unpaid FMLA leave, military leave, unpaid personal leave of absence, layoff, and absences covered under workers compensation.

A full-time employee with accumulated sick leave in excess of one hundred sixty (160) hours, upon the ratification date of this Agreement, shall retain his/her current sick leave hours, but shall not accumulate any additional sick leave until the employee has less than the maximum one hundred sixty (160) accumulated hours.

Incumbent Part-Time employees may accumulate up to a maximum of twenty-four (24) sick leave hours over a twelve (12) month period (two (2) hours per month), based on anniversary date, and may accumulate up to a maximum of eighty (80) hours. Sick leave hours do not accrue for absences unpaid by the Company, whether approved or not, including but not limited to unpaid FMLA leave, military leave, unpaid personal leave of absence, layoff, and absences covered under workers compensation. An Incumbent Part-Time employee with accumulated sick leave in excess of eighty (80) hours, upon the ratification of this Agreement, shall retain his/her current sick leave hours, but shall not accumulate any additional sick leave until the employee has less than the maximum eighty (80) accumulated hours.

In the event an employee's status changes - for example, from full-time to Incumbent Part-Time - the applicable maximum of accumulated sick leave hours will change, and if the employee's current sick leave hours exceed the maximum, no additional sick leave hours will be accumulated until, as a result of use, the employee's sick leave hours are below the maximum.

C. Payment Upon Termination

Terminating employees will not be paid for unused sick leave.

Section 2. Jury Duty

All non-probationary full-time and Incumbent Part-Time unit employees will receive the difference between eight (8) hours pay at the applicable hourly wage and actual payment received for jury service for each day of jury duty, to a maximum of ten (10) work days for each calendar year.

An employee is responsible to immediately notify his/her supervisor of the employee's summons for jury duty, and to provide the supervisor with a copy of the summons. Upon the completion of jury service, the employee is responsible to promptly provide a copy of his/her certificate of completion of jury duty to his/her supervisor.

Employees who are summoned to jury duty and do not serve the majority of their scheduled work day are expected to return to work to complete their work shift.

Employees whose shifts do not interfere with serving on jury duty will not receive jury duty pay unless their supervisor and the Miami Gateway Manager, or his/her designee, agree that working and serving on jury duty would impair the employee's ability to perform his/her job duties

TA on Article 24 on 4-14-10

ARTICLE 27. MISCELLANEOUS

Section 1. DHL Tuition Reimbursement Program

The Employer shall allow all full-time employees and part-time employees hired on or before the ratification of this Agreement (but not casual employees) to participate in the Employer's tuition reimbursement program.

Section 2. Employee Discount Programs

All full time employees and part time employees hired on or before the ratification of this Agreement shall be offered the same employee discount programs as non-bargaining unit or other bargaining unit personnel, including any employee discount shipping program.

Section 3. Customs Broker Certification

The Employer agrees to pay the application fee for an employee who successfully passes the exam and becomes a licensed custom broker.

TA on Article 24 on 4-14-10

Memorandum of Understanding Regarding C-TPAT

The parties agree that as part of the Employer's participation in the C-TPAT (the Customs – Trade Partnership Against Terrorism) Program for Air Consolidators, employees covered by the Clerical Gateway Rider shall be subject to random drug testing consistent with that program and provided the test shall be taken in a manner consistent with Article 23 of the National Agreement. The Employer agrees not to begin such testing prior to sixty days following ratification.

TA on Article 24 on 4-14-10

*DHL – Teamsters Local 769 Negotiations
Tentative Agreement reached 4-14-2010
Page 31 of 32*

Memorandum of Understanding Regarding Seniority

This memorandum memorializes the parties' agreement relative to the application of the definitions of "Employer Seniority" and "Unit Seniority" in the parties' Collective Bargaining Agreement to bargaining unit employees who have enjoyed the Company's prior policy relative to bridging of Company service. Under prior policy, an employee could leave the employ of the Company (typically by resignation) and then become re-employed by the Company, and have his or her prior service "bridged" for seniority purposes if he/she remained employed for at least 1 year after returning to the Company. Under this bridging policy, upon completing one year of continuous service after returning to the Company's employ, an employee was credited with their prior Company service (but did not receive any credit for the period of time they were not employed by the Company). As drafted, the definitions of Employer Seniority and Unit Seniority would not permit or allow such bridging of prior service upon re-employment after loss of seniority. Nevertheless, the parties have agreed, to preserve the seniority expectations of existing employees, that any bargaining unit employee employed as of the ratification of the parties' Collective Bargaining Agreement who received or was promised treatment under the Company's prior policy of bridging former Company service, will be entitled to obtain/retain their bridged seniority ((or both Employer and Unit Seniority) under such policy. The Company's former policy of bridging company service shall not apply to any employee hired or transferred into the bargaining unit after the ratification of the parties' Collective Bargaining Agreement. Further, bridged seniority shall not apply for the purposes of determining overtime opportunities within a department and/or classification.

Firmwide:95042705.1 046629.1118
4/16/10

EXHIBIT 5

[Page 1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

DIONNE MARSHALL and LUCIA GOMEZ,
on behalf of themselves and all
others similarly situated,

Plaintiffs,

v. Index No: 13-cv-0147 (RJD) (JO)

DEUTSCHE POST DHL, and DHL EXPRESS
(USA), INC.,

Defendants.

-----x

October 22, 2013

1:05 p.m.

Deposition of HENRY BENNETT, taken by
Plaintiffs, pursuant to notice, at the offices of
McLaughlin & Stern, LLC, 260 Madison Avenue, New
York, NY 10016, before Allison Fowler, a
Shorthand Reporter and Notary Public of the State
of New York.

[Page 37]

1 H. BENNETT

2 Q. Paying an employee accurately, based
3 upon the amount of time that they're clocked in
4 for is also important, right?

5 A. It is based on the amount of time that
6 they're working, correct.

7 Q. And once an employee clocks in, that's
8 when they're supposed to begin working, right?

9 A. It depends on whether or not there's
10 any sort of grace period or rounding rule
11 established for that work group, on whether the
12 working time begins when they clock in, or if
13 working time begins at the start of their shift
14 there.

15 Q. Are you knowledgeable about time
16 rounding?

17 A. Yes.

18 Q. I'm going to get to that in a little
19 bit.

20 You also said "grace period." Is time
21 rounding and grace period the same thing?

22 A. No, not in my definition.

23 Q. In your definition, what is a grace
24 period?

25 A. Grace period would be a window, usually

1 H. BENNETT

2 a few minutes before the shift begins until a few
3 minutes after the shift begins, in which an
4 employee can clock in and neither be considered
5 early nor late, and their shift begins at the top
6 of the hour, if you will.

7 If -- for example, if they begin at 8
8 o'clock, and you have a grace period of five to
9 8:00 to five after 8:00, they can clock in
10 anywhere within that ten-minute span, and they're
11 not considered either early or late, their time
12 -- their day begins at 8 o'clock.

13 Q. Are grace periods five minutes long?

14 MR. RAO: Object as to form.

15 A. No, that was just my example.

16 Q. Do you know how long grace periods are?

17 A. I have seen grace periods longer than
18 five minutes, in my experience.

19 Q. What's the longest grace period that
20 you've seen in your experience?

21 A. Ten minutes, either way.

22 Q. So that means that if an employee were
23 to clock in ten minutes early, it would start
24 paying them at their scheduled time?

25 A. Yes, unless they worked during that

1 H. BENNETT

2 grace period time, in which case they would have
3 to get paid for that grace period.

4 Q. What procedures are in place to
5 determine whether or not an employee has worked
6 during that grace period?

7 A. Well, it's really up to the employee to
8 let their manager know that they worked during
9 what was during the considered the grace period
10 so that the employee can get paid for that time.

11 Q. During the employee orientation, do you
12 ever go over what an hourly employee is supposed
13 to do if they clock in early and work during the
14 grace period?

15 A. I have never had a grace period
16 employee to give that counsel to.

17 Q. But you said that you give orientations
18 to hourly employees, right?

19 A. But in the locations where I have hired
20 hourly employees, they didn't have a grace
21 period.

22 Q. So in those locations, if an employee
23 clocked in eight minutes early, what would
24 happen?

25 MR. RAO: Object as to form.

1 H. BENNETT

2 A. In locations where they clock in early,
3 at eight minutes to the hour, they have to be --
4 they're starting to get paid at eight minutes to
5 the hour.

6 Q. Do you know what locations employ grace
7 periods and which don't?

8 A. No, I don't.

9 Q. Do you know approximately how many
10 locations in the United States employ grace
11 periods, as compared to how many don't?

12 A. No, I don't.

13 Q. Do you know who makes the determination
14 as to what facilities employ grace periods, as it
15 compares to those that don't?

16 A. In my experience, it's usually the head
17 of that facility, the manager, the senior leader
18 at that location will make that determination if
19 it's in a -- if they're allowed to do it.

20 Meaning, if there's no contract rules or other
21 rules that prohibit them from creating these pay
22 rules at their location.

23 Q. Does the JFK facility employ a grace
24 period, if you know?

25 MR. RAO: Object as to form.

1 H. BENNETT

2 A. I don't know.

3 Q. Who would know?

4 MR. RAO: Object as to form.

5 A. Who would know, the employees at JFK.

6 Q. Okay. You said it's up to the
7 individual senior leaders at each facility to
8 determine whether or not they employ a grace
9 period, correct?

10 A. Unless they're -- yes, unless there are
11 some rules governing that location, such as a
12 contract that would have -- override what that
13 senior leader can do on his or her own.

14 Q. Would that contract come in the form of
15 a collective bargaining agreement?

16 A. Yes.

17 Q. Would there be any other contract that
18 would govern the rules of grace periods?

19 A. No.

20 Q. So I'm jumping the gun a little bit
21 here, but just to get it on the record, we've
22 discussed grace periods. Now, what is the
23 different between grace period and time rounding,
24 in your opinion?

25 A. In my opinion, rounding is a window of

1 H. BENNETT

2 time prior to your start time in which an
3 employee can clock in, a nonexempt employee, can
4 lock in, and -- within that window, and your
5 start time actually begins at the beginning of
6 your shift. So you're not paid for that rounding
7 time in which you've clocked in early.

8 Q. Okay. Is there a way to tell on
9 employee time sheets which time is a grace period
10 and which time is subject to time rounding?

11 MR. RAO: Object as to form.

12 A. I don't know. I don't know that level
13 of detail with our timekeeping system to know if
14 we can or cannot.

15 Q. Who would be the person to know that?

16 MR. RAO: Object as to form.

17 Q. To the best of your knowledge.

18 A. Probably Toni over in payroll.

19 Q. And that's Toni Coon?

20 A. Right.

21 Q. Can you just look at page 12 with me on
22 the Bennett Exhibit 1? I'm looking at a role
23 classification system in parentheses (RCS.) Do
24 you see where I'm looking?

25 A. Yes.

1 H. BENNETT

2 and the manager would say, yes, stay late, and
3 you'll get overtime, or no, go home, and you'll
4 finish your job tomorrow.

5 Q. You testified before, or we were
6 discussing, I should say, that employees clock in
7 when they begin work and clock out when they end
8 work, correct?

9 A. Unless there's some other provisions,
10 like a rounding or grace period.

11 Q. Are employees that are subject to a
12 grace period instructed anywhere that they will
13 not be compensated until the beginning of their
14 shift if they sign in early?

15 MR. RAO: Object as to form.

16 A. I don't know what's been communicated
17 to employees who have a grace period assigned to
18 them.

19 Q. But that's nowhere in the employee
20 handbook, correct?

21 A. That's correct. We don't have anything
22 in the employee handbook about that.

23 Q. Do you have anything in the employee
24 handbook about time rounding that employees will
25 not be compensated if they clock in prior to

1 H. BENNETT

2 their scheduled shift?

3 A. No, that's not in the employee
4 handbook.

5 Q. Is that written anywhere, to your
6 knowledge?

7 A. I don't know where it is written.

8 Q. Do you know if that information is
9 disseminated to employees during orientation?

10 A. I don't know if it is or it's not.

11 Q. Have you ever disseminated that
12 information to employees during orientation?

13 A. No, because none of the employees I
14 have ever oriented worked in a location that had
15 rounding or grace periods.

16 Q. Do you know if JFK employs grace
17 periods?

18 A. I don't know if they do or not.

19 Q. Do you know if JFK employees have time
20 rounding?

21 A. I don't know if they do or not.

22 Q. Who would know that?

23 MR. RAO: Object as to form.

24 A. The leadership at JFK.

25 Q. Do you know who that is?

[Page 86]

1 H. BENNETT

2 Q. Do you know who developed the grace
3 period policy?

4 MR. RAO: Object as to form.

5 A. No, I don't know.

6 Q. Do you know who developed the time
7 rounding policy?

8 MR. RAO: Object as to form.

9 A. I don't know.

10 Q. Have both of those policies been there
11 throughout the entirety of your employment with
12 DHL?

13 MR. RAO: Object as to form.

14 A. I'm not aware of that policy even
15 existing, so I don't know if they've been around
16 at all. I mean --

17 Q. But you testified earlier that you know
18 that grace periods exist at some facilities and
19 that you know that time rounding exists at some
20 facilities?

21 MR. RAO: Object as to form.

22 And there's no question pending.

23 Q. Didn't you testify earlier to that?

24 MR. RAO: Object as to form.

25 A. I don't know of any grace periods or

[Page 87]

1 H. BENNETT
2 time rounding existing at any facilities, I was
3 brought into, you know, consultation with a
4 colleague of mine about time rounding at the JFK
5 facility asking my opinion on what time rounding
6 would be, but I don't know if they implemented
7 it. I don't know of any time rounding or grace
8 periods that exist anywhere.

9 MR. GALLAWAY: Mark this as 3.

10 (Time Detail was marked as Plaintiff's
11 Exhibit 3, for identification, as of this
12 date.)

13 MR. GALLAWAY: Don't whisper into the
14 plaintiff's ear.

15 MR. RAO: I'll tell you what I said.
16 He said "JFK," he meant CVG.

17 MR. GALLAWAY: I meant CVG?

18 MR. RAO: He meant CVG.

19 MR. GALLAWAY: Under what
20 circumstances?

21 MR. RAO: The last answer.

22 A. My colleague at CVG and I discussed
23 time rounding, but I don't know if time rounding
24 was ever implemented at CVG.

25 Q. What did you and your colleague at CVG

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, ALLISON FOWLER, a shorthand
reporter and Notary Public within and for
the State of New York, do hereby certify:

That the witness(es) whose
testimony is hereinbefore set forth was
duly sworn by me, and the foregoing
transcript is a true record of the
testimony given by such witness(es).

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of this
matter.

ALLISON FOWLER

ERRATA SHEET

I, HENRY BENNETT, do hereby certify that I have read the transcript of my testimony of October 22, 2013, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

PAGE/LINE	CORRECTION
<u>Page 44, line 22</u>	<u>Change "CVA" to "CBA"</u>
<u>Page 52, line 7</u>	<u>Change "Louisiana" to "Los Angeles"</u>
<u>Page 59, line 12</u>	<u>Change "yes" to "no"</u>
<u>Page 98, line 22</u>	<u>Change "deemed" to "dinged"</u>

HBennett

HENRY BENNETT

12-3-13

State of California
Only at Court
 Subscribed and sworn to

before me this 3rd day
 of December, 2013

by Henry Bennett
proved to me on the basis of satisfactory
 evidence to be the person(s) who appeared before me.

[Signature]

NOTARY PUBLIC

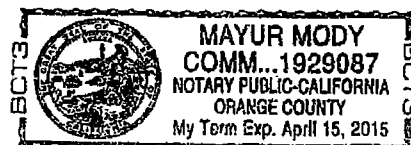


EXHIBIT 6

[Page 1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DIONNE MARSHALL and LUCIA GOMEZ,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

Index No. 13-cv-01471 (RJD) (JO)

DEUTSCHE POST DHL and DHL EXPRESS (USA)
INC.

Defendants.

DEPOSITION OF VINCENT MARTINEZ

March 7, 2014

1:17 p.m.

865 S. Figueroa Street, Suite 3100
Los Angeles, California

REPORTED BY:

Stephanie S. Nunez

CSR No. 11132, RPR

[Page 22]

1 A. -- getting emails from the supervisors them-
2 selves.

3 Q. So you just then had verbal communications with
4 them?

5 A. From what I recall, yeah.

6 Q. What corrective action did you take to ensure
7 that employees did not work off-the-clock?

8 A. Employees that worked off-the-clock, we would
9 generally counsel them, have a discussion with them
10 regarding the policies, remind them that they are to be
11 paid for their time, and then, if it became an issue, it
12 became a repeated issue, then we would issue a disci-
13 plinary action, again, the corrective action.

14 Q. Is there always supposed to be a supervisor or
15 manager on duty when a customs broker agent is working?

16 A. No.

17 Q. So it's possible then that customs broker agents
18 work off-the-clock and supervisors don't see?

19 MS. VOGELZANG: Objection. Speculation.

20 THE WITNESS: If there's no supervisor on duty,
21 they obviously can't see it, so I would have to say,
22 yeah, it's plausible.

23 Q. BY MR. GALLAWAY: It's a "If a tree falls in a
24 forest, does it make a sound, if there's nobody there to
25 hear it?" kind of thing.

[Page 52]

1 THE WITNESS: Timekeeping policy? Could you be
2 more specific? I'm not sure exactly what you're getting
3 at.

4 Q. BY MR. GALLAWAY: Has DHL issued any internal
5 memorandum or announcements or corrective action with
6 regards to, let's say, time rounding?

7 A. Time rounding?

8 Q. Yeah.

9 MS. VOGELZANG: Objection. Compound.

10 THE WITNESS: Time rounding, as I understand it,
11 is when a swipe is not taken at its -- at its face value;
12 basically it's not recorded at the moment that it occur-
13 red. But it's recorded separately, or the time is
14 ignored, I guess; right?

15 So I know that there was a change this last
16 summer to the way Kronos recorded time. Is that what
17 you're referring to?

18 Q. BY MR. GALLAWAY: Sure.

19 What was the change?

20 A. The change this summer: Our clocks for lunch,
21 when people swiped backed from lunch, if I recall cor-
22 rectly, was locking you out. So if you were -- if you
23 were entitled to a 30-minute lunch and you tried to swipe
24 back in at 25 minutes, it wouldn't allow you to swipe
25 until that 30th minute, I guess in a way to make sure

[Page 53]

1 that you were off-the-clock for the lunch, for the entire
2 lunch period. The change was that that lock was disabled
3 and it's now recording to the minute.

4 Q. So up until what point -- I should say: From
5 when to when was the policy in place that an employee
6 would try to swipe back in early before their 30 minutes
7 and it would not allow them to swipe back in early?

8 A. It ended towards the end of the summer. And I
9 believe it was in place for approximately two years.

10 Q. So approximately 2011 to summer of 2013?

11 A. Right.

12 Q. And so from 2011 to 2013, when an employee
13 clocked back in -- or attempted to clock back in from
14 lunch, let's say, five minutes early, for that employ-
15 ee -- it automatically deducted 30 minutes in that
16 employee's lunch?

17 A. Our clocks never deducted time.

18 Q. So would the employee -- would the employee's
19 paycheck reflect a 30-minute meal?

20 A. The employee was not able to swipe back in, so
21 there -- there had to have been a correction made to
22 that. The employee had to wait 30 minutes to swipe.

23 Q. Is there a meal break room on -- in the LAX
24 facility?

25 A. Yes, there is.

[Page 56]

1 by any means.

2 And you -- we talked before about the ten-minute
3 rounding rule at the LAX facility.

4 MS. VOGELZANG: Objection. Misstates testimony.

5 Q. BY MR. GALLAWAY: If can you explain to me, to
6 the best of your knowledge, what the current rounding
7 rule is at the LAX facility.

8 A. We don't use that terminology, so if you're
9 referring to prior to the start shift -- is that what it
10 is?

11 Q. Yes. Okay. Prior to the start of the shift.

12 A. Our clocks, our Kronos clocks -- which is our
13 timekeeping system -- will allow an employee to swipe
14 their badge and record their presence in the building up
15 to ten minutes prior to their scheduled start, although
16 the employee's not required to work until their scheduled
17 start.

18 Q. Are the employees specifically told not to work
19 when they clock in?

20 A. I would say that, if they are -- if they --
21 they're told that, if they're working, they should be
22 compensated for the time that they spent working.

23 Q. So the answer to my question is, no, that an
24 employee's not specifically told not to work when they
25 clock in?

[Page 57]

1 MS. VOGELZANG: Objection. Speculation.

2 THE WITNESS: What I've personally told people
3 is "Don't start work until your scheduled time, unless
4 approved." That's what I've personally told them.

5 MS. VOGELZANG: Ready for a break? It's a
6 convenient time.

7 MR. GALLAWAY: Let me just quickly with this ...

8 MS. VOGELZANG: Sure.

9 MR. GALLAWAY: And then we'll take a break.

10 Q. BY MR. GALLAWAY: Mr. Martinez, you've been
11 handed what's been marked as Martinez Exhibit 2. It's a
12 group of documents Bates labeled 2986 through 3015. If
13 you can, I'd ask that you go to Bates label 3008.

14 (Exhibit 2 marked)

15 Are you on 3008?

16 A. Yes.

17 Q. Okay. Have you ever seen this document before?

18 A. No.

19 Q. Okay. Is this just Latin to you?

20 A. I wouldn't go that far. But I've never seen it
21 before.

22 Q. Okay. On the top of the page, the language in
23 brackets, says NU LAX GW Hourly FT Shift 1. You see
24 where I'm looking?

25 A. Yes.

[Page 67]

1 "worked."

2 Q. BY MR. GALLAWAY: Is that accurate?

3 A. The person was compensated, yeah.

4 Q. Okay. So, in this circumstance, it did not
5 round down to the 30 minutes when the employee took a
6 late lunch or clocked back in to you. It actually paid
7 them minute to minute; correct?

8 A. Correct. 'Cause they exceeded the three
9 minutes.

10 Q. So my initial question was that the rounding
11 then is ten minutes before; correct?

12 A. Correct.

13 Q. That employee clocks in up to ten minutes before
14 it rounds them up to their start shift.

15 A. Correct.

16 Q. And the only time that you're telling me it
17 would balance out is because there is a three-minute
18 window at the end of lunch that they can clock back in
19 after the full 30-minute expiration and be compensated
20 for 30 minutes?

21 A. Well, your characterization of it balancing out
22 I don't think is accurate because, at the front end,
23 they're not expected to be working. After lunch they are
24 expected to be working. So that three-minute grace will
25 have a courtesy, you know, for everybody coming off

[Page 68]

1 lunch: Congestion, what have you. People at the
2 beginning of their shift are not required, not obligated
3 to be working prior to the start of their shift, which is
4 reflected in this record here.

5 Q. But DHL has a policy in place that employees are
6 supposed to accurately record their time; correct?

7 A. Correct.

8 This doesn't tell me what this person was doing,
9 whether they were actively working or not. Simply that
10 they were in the building.

11 Q. Would you consider it an inaccurate recordation
12 of time if an employee clocked in before their shift?

13 MS. VOGELZANG: Objection.

14 THE WITNESS: If the person swiped prior to the
15 time of their shift, no, I would not consider it to be an
16 inaccurate representation of their time.

17 Q. BY MR. GALLAWAY: So then, if an employee clocks
18 in before their shift and it's not an inaccurate repre-
19 sentation of their time, and they're allowed to clock in
20 up to ten minutes before their shift, and currently the
21 policy is in place that employees have a three-minute
22 grace period, that leaves a seven-minute window that
23 employees could work and not be compensated for; is that
24 accurate?

25 MS. VOGELZANG: Objection.

[Page 95]

1 required -- or expected to have a 30-minute break to be
2 completed prior to the beginning of the sixth hour, so
3 sometimes in the fifth hour; that they are not allowed to
4 be given any work-related activities or bothered during
5 that time frame. And, if that doesn't occur, that the
6 company is penalized an hour's worth of wages for the
7 employee, payable to the employee.

8 Q. Okay. And is that your understanding of what
9 the third paragraph in Martinez Exhibit 5 is in reference
10 to?

11 A. Where the rollout of Kronos -- the one that
12 starts with "For the rollout of Kronos"?

13 Q. Yes.

14 A. Yes.

15 Q. Okay. But it's still your understanding, based
16 upon the time records that I showed you, that employees
17 at LAX are still automatically deducted a full 30 min-
18 utes, regardless of when they clock in and clock out;
19 correct?

20 MS. VOGELZANG: Objection.

21 THE WITNESS: No. What I -- what I saw was
22 rounding, not necessarily complete deduction. I don't
23 know what happens if somebody doesn't swipe at all, if
24 there's -- that 30 minutes is accounted for there,
25 regardless.

[Page 96]

1 My understanding is that, if somebody does not
2 swipe out for lunch, they get paid straight time all the
3 way through. Then, if they get hit with a penalty -- or
4 the employer gets hit with a penalty, it's paid to the
5 employee.

6 Q. So if the employee doesn't clock in or clock out
7 at all.

8 A. At all.

9 Q. So you think that the employee is compensated
10 for all their time?

11 A. Yes.

12 Q. How often do employees forget to clock in and
13 clock out for lunch?

14 MS. VOGELZANG: Objection.

15 THE WITNESS: I don't know. It happens.

16 Q. BY MR. GALLAWAY: But for all the times that --
17 strike that.

18 Would you agree with me that the employees
19 follow procedure and do clock in and clock out for lunch
20 the majority of the time?

21 A. Yes.

22 Q. So it's more of a rarity that they would miss a
23 meal break punch altogether; correct?

24 A. Correct.

25 Q. Then would you agree with me the majority of the

[Page 105]

1 STATE OF CALIFORNIA)

)

2 COUNTY OF LOS ANGELES)

3

4 I, Stephanie S. Nunez, a Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in the
7 foregoing proceedings was by me duly administered an oath
8 to testify to the truth, the whole truth, and nothing but
9 the truth;

10 That said proceedings were taken before me at
11 the time and place therein set forth and were taken down
12 by me in shorthand and thereafter transcribed into
13 typewriting under my direction and supervision;

14 I further certify that I am neither counsel for,
15 nor related to, any party to said proceedings, nor in
16 anywise interested in the outcome thereof.

17 In witness whereof, I have hereunto subscribed
18 my name.

19

20 Date: March 9, 2014

21

22

23 Stephanie S. Nunez

CSR No. 11132, RPR

24

25